



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शनिवार, 26 सितम्बर, 2015 / 4 आश्विन, 1937

हिमाचल प्रदेश सरकार

[Authoritative English text of this Department Notification No.TPT-A(3)-4/2013 dated 24-09 2015 as required under clause (3) of Article 348 of the Constitution of India.]

TRANSPORT DEPARTMENT

NOTIFICATION

Shimla-2, the 24th September, 2015

No. TPT-A (3)-4/2013.—In exercise of the powers conferred by section 211 read with section 212 of the Motor Vehicles Act, 1988 (Act No. 59 of 1988), the Governor, Himachal

Pradesh proposes to make the following rules further to amend the Himachal Pradesh Motor Vehicles Rules, 1999, published in Rajpatra (Extraordinary), Himachal Pradesh, Dated 27th July, 1999 vide this department notification no. 5-24/88-TPT-III dated 12th July, 1999 and the same are hereby published in the Rajpatra, Himachal Pradesh for information of the general public as required under sub section(1) of section 212 of the Motor Vehicles Act, 1988 and a notice is hereby given that the said rules shall be finalized after the expiry of seven days period from the date of publication of these rules;

If any person, likely to be affected by these rules, has any objection(s) or suggestion(s) to make with regard to these draft rules, he may send the same to the Additional Chief Secretary (Transport) to the Government of Himachal Pradesh, Shimla-2, within a period of seven days from the date of publication of the said draft rules in the Rajpatra, Himachal Pradesh;

The objection(s) or suggestion(s), if any, received within the above stipulated period, shall be considered by the Government of Himachal Pradesh before finalizing the said draft rules, namely:—

Draft Rules

1. Short title.—These rules may be called the Himachal Pradesh Motor Vehicles (Amendment) Rules, 2015.

2. Substitution of rule 69-B.—For the rule 69-B of the Himachal Pradesh Motor Vehicles Rules, 1999, the following rule shall be substituted, namely:—

“69-B-Special Registration Fee for allotment of registration marks—There shall be charged a Special Registration Fee, in addition to the registration fee, prescribed under rule-81 of the Central Motor Vehicles Rules, 1989, for allotment of the following registration marks to the Motor Vehicles by all Registering and Licensing Authorities in the State of Himachal Pradesh, at the following rates, namely:—

Sr. No.	Special Registration Mark	Special Registration Fee
1.	0001 to 0010 (reserved)	₹ 1,00,000 (One Lac)
2.	0011 to 0100	₹ 1,00,000 (One Lac)
3.	Fancy numbers between 0101 to 0999 i.e 0101 0111 0200 0201 0222 0251 0300 0303 0333 0400 0444 0500 0501	₹ 25,000 (Twenty Five Thousand)

	0505 0555 0600 0666 0700 0777 0786 0800 0888 0900 0999	
4.	Fancy numbers between 1000 to 9999 <i>i.e</i> 1000 1001 1111 2000 2001 2222 3000 3333 4000 4444 5000 5001 5555 6000 6666 7000 7777 8000 8888 9000 9999	₹ 5,000 (Five Thousand)

Provided that registration marks specified against Sr. No. 1 shall be reserved for the motor vehicles owned by the Government and shall be allotted only after the payment of fixed charge of ₹1,00,000/- (Rs One lac only) by the concerned Government Agency:

Provided further that the registration marks specified against Sr. No. 2, 3 and 4 shall be totally paid numbers and shall be allotted on first come first serve basis:

Provided further that in case of any motor vehicle meets with an accident and is a total loss duly certified by the Insurance Company, the owner of the said motor vehicle shall not be required to pay the special registration fee specified for the same registration number for a new vehicle in the same name in whose name the earlier vehicle was registered:

Provided further that the owner may retain the registration mark of his vehicle, after the sale or scrapping of such old vehicle only when the same is reassigned a new registration mark by the Registering and Licensing Authority. The primary number, if vacated, shall remain in safe custody of the Registering and Licensing Authority and the previous owner shall be entitled to get the same registration mark assigned to his new vehicle within a period of one year from the date of such

surrender. For assigning the said registration mark to the new vehicle, no special registration fee shall be charged from the such previous owner. In case the such previous owner of vehicle fails to get the same number assigned to a new vehicle within a period of one year, the said number shall be deemed to have been surrendered to the Government and the concerned Registering and Licensing Authority shall be at liberty to assign that number to any other applicant in accordance with the provisions of these rules.”

By order,
AJAY MITTAL,
Additional chief Secretary (Transport).

गृह विभाग

अधिसूचना

शिमला-2, 10 सितम्बर, 2015

संख्या: गृह (ए)बी(1)-5/2015.—हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश पुलिस अधिनियम, 2007 (2007 का अधिनियम संख्यांक 17) की धारा 11 की उपधारा (1) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस अधिसूचना के राजपत्र (ई-गजट), हिमाचल प्रदेश में प्रकाशन की तारीख से पुलिस थाना खुण्डियां, जिला कांगड़ा के अन्तर्गत पुलिस चौकी मझीण का सुजन करते हैं, जिसमें निम्नलिखित ग्राम पंचायतें/गांव सम्मिलित होंगे, अर्थात्:—

क्रम संख्या	ग्राम पंचायत का नाम	स्तम्भ संख्या 2 में विनिर्दिष्ट ग्राम पंचायतों में अन्तर्विष्ट गांवों के नाम
1	2	3
1	ग्राम पंचायत, टिप्परी	1. चौकी 2. कियोड़ 3. टिप्परी 4. बुली 5. मेरी 6. डूहक
2	ग्राम पंचायत, जरुडी	1. बरवाला 2. टीहरी 3. जरुडी 4. परौठा 5. झोला 6. कसड़ 7. सोली 8. डाहड 9. भटावां

3	ग्राम पंचायत, मझीण	<ol style="list-style-type: none"> 1. सिद्धपुर 2. भडनाल 3. अमरेड़ 4. डड़ल 5. मतरेड़ 6. भरेड़ 7. कोटू-ढोरियां 8. चौकी-ढोरियां 9. मझीण 10. बाग 11. फकेड़ 12. जमन 13. बलह-बागडू 14. ज्योड़ 15. सर्वनाटी 16. त्रयामलू 17. छिमकड़ 18. दबकड़े 19. धतड़े
4	ग्राम पंचायत, सियालकड़	<ol style="list-style-type: none"> 1. डल 2. छरड़ 3. ढक्खर 4. बलड़ी 5. गिलडू 6. सडूही 7. हदवां 8. सियालकड़ 9. कूड़ी 10. बलड़ा 11. मनणू 12. मरयाणा 13. मनेरा 14. जजर 15. डिब्ब 16. भटाल-कलां 17. कुकरेड़ 18. भटाल-खुर्द 19. सकरुही
5	ग्राम पंचायत, सिल्ह	<ol style="list-style-type: none"> 1. मोरड़ 2. भौरन-चनालटी 3. धुलास 4. हार-देहरी 5. सिल्ह 6. प्रमेड़ 7. डोडरू

आदेश द्वारा,
हस्ताक्षरित /—
मुख्य सचिव (गृह)।

[Authoritative English text of this Department Notification No. Home-(A)B (1)- 5/2015, dated 10th September, 2015 as required under Article 348(3) of the Constitution of India].

HOME DEPARTMENT

NOTIFICATION

Shimla-2, the 10th September, 2015

No. Home-(A)B (1)-5/2015.—In exercise of the powers conferred by proviso to sub section (1) of section 11 of the Himachal Pradesh Police Act, 2007 (Act No. 17 of 2007), the Governor of Himachal Pradesh is pleased to create the Police Post Majheen under Police Station Khundian, District Kangra with effect from the date of publication of this Notification in the Rajpatra (e-Gazette), Himachal Pradesh which shall consist of the following Gram Panchayats/villages, namely:—

Sr. No	Name of Gram Panchayat	Name of villages contained in Gram Panchayat specified in column No. 2
1	2	3
1.	Gram Panchayat, Tippi	1. Chowki 2. Kiyour 3. Tippi 4. Bulli 5. Merri 6. Duhak
2.	Gram Panchayat, Jarundi	1. Barwala 2. Tihri 3. Jarundi 4. Parontha 5. Jhola 6. Kasar 7. Soli 8. Dahad 9. Bhatawan
3.	Gram Panchayat, Majheen	1. Sidhpur 2. Bhadnal 3. Amrer 4. Dadal 5. Matrehr 6. Bharer 7. Kotu-Dhorian 8. Chowki-Dhorian 9. Majheen 10. Bag 11. Fakehr 12. Jaman

		13. Balh-Bagru 14. Jayod 15. Sarbnati 16. Taryamblu 17. Chhimkar 18. Dabkehr 19. Dhater
4.	Gram Panchayat, Siyalkar	1. Dal 2. Chard 3. Dakhar 4. Baldi 5. Gildu 6. Saduhi 7. Hadwan 8. Siyalkar 9. Kudi 10. Balda 11. Mananu 12. Mariana 13. Manera 14. Jajar 15. Dib 16. Bhatal-Kalan 17. Kukrehr 18. Bhatal-Khurd 19. Sakruhi
5.	Gram Panchayat, Silh	1. Mord 2. Bhoran Chanalti 3. Dhulas 4. Har-Dehri 5. Silh 6. Pramed 7. Dodru

By order,
Sd/-
Chief Secretary (Home).

No. Home-(A)B (1)-15/2015
Government of Himachal Pradesh
Department of Home-A

To

The Director General of Police
Himachal Pradesh, Shimla-2.

Dated: the, Shimla-2 16th September, 2015

Subject: Opening of Police Post at Kutehr for Hydro Electric Project (240 MW) on PSOD basis in Tehsil Bharmour, District Chamba.

Sir,

I am directed to refer to the subject cited above and to convey the approval of the Government to open a Police Post at Kutehr for Kutehr Hydro Electric Project (240 MW) on "Police Supplied to Other Department" (PSOD) basis in Tehsil Bharmour, District Chamba alongwith creation of following additional staff in the pay structure/scale for the post of Asstt. Sub-Inspector ₹ 10300-34800 + ₹ 4400 GP, Head Constable ₹ 10300-34800 +3600 GP and Constable (a) ₹ 5910-20200 + ₹ 1900 GP (b) ₹ 10300-34800 + ₹ 3200 GP (after 8 years of regular service) till the commissioning of the Project :—

Name of Police Post	ASI	HC	Constable	Total
Kutehr (Bharmour), District Chamba	1	1	7 (5 male + 2 female)	9

In addition, the job(s) of Cook and Sweeper will be outsourced in above Police Post. The entire area of Hydro Electric Project (240 MW), Kutehr will be under the jurisdiction of this Police Post. The above approval will be subject to the condition to observe all the codal formalities procedurally in advance in the regard.

This issues with the prior concurrence of Finance department obtained vide their U.O No. 53324098-Fin-F/2015, dated 10.08.2015.

Yours faithfully,
Sd/-
Under Secretary (Home).

No. Home-(A)B(1)-14/2015
Government of Himachal Pradesh
Department of Home-A.

To

The Director General of Police
Himachal Pradesh, Shimla-2.

Dated: the, Shimla-2 14th September, 2015

Subject: Provision of Police Guard for explosive magazine of Associated Cement Factory
Gagal Barmana (Bilaspur).

Sir,

I am directed to refer to your office letter No. PII(1)Bilaspur/37/2006-18001 dated 15.7.2015 on the subject cited above and to convey the approval of the Government to withdraw the security provided to magazine of Associated Cement Company, Gagal, Barmana (Bilaspur) subject to the condition that the posts created in PSOD for ACC (Magazine) will stand abolished, with immediate effect.

2. This issues with the prior concurrence of the Finance Deptt. obtained vide their U.O. No. 53316653-Fin-F/2015, dated 10.08.2015.

Yours faithfully,
Sd/-
Under Secretary (Home).

LABOUR AND EMPLOYMENT DEPARTMENT**NOTIFICATION***Shimla, the 15th September, 2015*

No: Sharm (A) 6-2/2014 (Awards) D/Shala.—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court D/Shala on the website of the Department of Labour & Employment of the Government of Himachal Pradesh:—

Sr.No.	Ref. No.	Petitioner	Respondent	Date of Award/ Order
1.	373/14	Dhobi Devi	E.E.HPPWD, Joginder Nagar	03-07-2015
2.	226/15	Raju Khan	E.E.HPPWD, Joginder Nagar	03-07-2015
3.	230/15	Jai Chand	E.E.HPPWD, Joginder Nagar	03-07-2015
4.	370/14	Vinod Kumar	E.E.HPPWD, Joginder Nagar	03-07-2015
5.	18/15	Rattan Chand	E.E.HPPWD, Joginder Nagar	03-07-2015
6.	21/15	Pyar Chand	E.E.HPPWD, Joginder Nagar	03-07-2015
7.	25/15	Gian Chand	E.E.HPPWD, Joginder Nagar	03-07-2015
8.	28/15	Rajesh Kumar	E.E.HPPWD, Joginder Nagar	03-07-2015
9.	30/15	Vidya Devi	E.E.HPPWD, Joginder Nagar	03-07-2015
10.	31/15	Hari Singh	E.E.HPPWD, Joginder Nagar	03-07-2015
11.	310/14	Raj Mal	E.E.HPPWD, Joginder Nagar	03-07-2015
12.	40/15	Amit Kumar	E.E.HPPWD, Joginder Nagar	03-07-2015
13.	37/15	Naveen Kumar	E.E.HPPWD, Joginder Nagar	03-07-2015
14.	158/13	Subhash Chand	Employer Trig Detective	06-07-2015
15.	190/15	Umesh Kumar	E.E.HPPWD, Joginder Nagar	08-07-2015
16.	10/13	Chiman Lal	E.E.HPPWD, Baijnath	10-07-2015
17.	139/15	Kewal Kumar	S.E.(NH) HPPWD	10-07-2015
18.	48/15	Roshani Devi	E.E.HPPWD, Dharampur	10-07-2015
19.	183/13	Sandeep	M.D.M/s Cozy Touch Poly.	14-07-2015
20.	249/13	Gen. Secy.HPPWD	E.E.HPPWD, Joginder Nagar	21-07-2015
21.	74/14	Desh Raj	D.F.O. Bilaspur	21-07-2015
22.	02/13	Kuram Dutt	E.E.HPPWD, Gohar	21-07-2015

Sr.No.	Ref. No.	Petitioner	Respondent	Date of Award/ Order
23.	03/13	Chitter Singh	E.E.HPPWD, Gohar	21-07-2015
24.	11/13	Het Ram	E.E.HPPWD, Gohar	21-07-2015
25.	243/14	Rajinder Paul	Director of Industries	22-07-2015
26.	217/13	Kamer Chand	D.F.O. Palampur	22-07-2015
27.	16/14	Deep Kumar	D.F.O. Joginder Nagar	27-07-2015
28.	85/14	Guddi Devi	D.F.O. Joginder Nagar	27-07-2015
29.	47/13	Sarpa Devi	D.F.O. Joginder Nagar	28-07-2015
30.	83/14	Gojru Ram	D.F.O. Joginder Nagar	28-07-2015
31.	84/14	Rikhi Ram	D.F.O. Joginder Nagar	28-07-2015
32.	361/14	Jai Chand	E.E.HPPWD, Joginder Nagar	28-07-2015
33.	372/14	Revat Ram	E.E.HPPWD, Joginder Nagar	28-07-2015
34.	359/14	Krishna Devi	E.E.HPPWD, Joginder Nagar	28-07-2015
35.	306/14	Ruma Devi	E.E.HPPWD, Joginder Nagar	28-07-2015
36.	113/12	Om Prakash	E.E.HPPWD, Joginder Nagar	28-07-2015
37.	184/15	Dev Raj	Principal Chief Conservator	28-07-2015
38.	183/15	Purshotam Chand	Principal Chief Conservator	28-07-2015
39.	185/15	Ravi Kumar	Principal Chief Conservator	28-07-2015
40.	186/15	Saroop Chand	Principal Chief Conservator	28-07-2015
41.	187/15	Mohinder Singh	Principal Chief Conservator	28-07-2015
42.	188/15	Ram Saroop	Principal Chief Conservator	28-07-2015
43.	62/13	Ravinder Kumar	E.E.HPPWD, Baijnath	30-07-2015
44.	273/14	Surender Singh	E.E.HPPWD, Joginder Nagar	31-07-2015
45.	391/14	Kaul Singh	E.E.HPPWD, Joginder Nagar	31-07-2015
46.	301/14	Surender Kumar	E.E.HPPWD, Joginder Nagar	31-07-2015
47.	284/14	Bhagmal	E.E.HPPWD, Joginder Nagar	31-07-2015
48.	290/14	Bhagmal	E.E.HPPWD, Joginder Nagar	31-07-2015
49.	297/14	Kishori Lal	E.E.HPPWD, Joginder Nagar	31-07-2015

By order,
Sd/-

Pr. Secretary (Labour & Employment).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 373/ 2014

Smt. Dhobi Devi w/o Shri Bhikham Ram, r/o Village Lakhnoot, P.O. Makriri, Tehsil Joginder Nagar, District Mandi, H.P.

.....*Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.

.....*Respondent.*

03-07-2015 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 12.18 A.M. Be awaited and put up after lunch hours.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

03-07-2015 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 3.20 P.M. None appearance of petitioner or her ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:

03-07-2015

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 226/ 2015

Sh. Raju Khan s/o Shri Balia Khan, r/o Village Biru, P.O. Tehsil Ladbharol, District Mandi, H.P.

.....*Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.
.....Respondent.

03-07-2015 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 12.05 A.M. Be awaited and put up after lunch hours.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

03-07-2015 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.58 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:
03-07-2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 230/ 2015

Sh. Jai Chand s/o Shri Lala Ram, r/o Village Patrain, P.O. Gangoti, Tehsil Ladbharol
District Mandi, H.P.

.....Petitioner.

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.
.....Respondent.

03-07-2015 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 12.10 A.M. Be awaited and put up after lunch hours.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

03-07-2015 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 3.05 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:
03-07-2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 370/ 2014

Sh. Vinod Kumar s/o Shri Pyar Chand, r/o Village Passal, P.O. Chauntra, Tehsil Joginder Nagar, District Mandi, H.P.

.....*Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.

.....*Respondent.*

03-07-2015 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

Case has been called again several times but none has appeared on behalf of the petitioner. It is 3.10 P.M. None appearance of petitioner or his Id. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

Ref: No. 18/ 2015

.....*Petitioner.*

Versus

03-07-2015 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

(K.K.Sharma)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).*

(K.K.Sharma)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).*

03-07-2015 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

03-07-2015 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

(K.K.Sharma)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).*

(K.K.Sharma)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).*

03-07-2015 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.33 A.M. Be awaited and put up after lunch hours.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

03-07-2015 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.47 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:
03-07-2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. : 30/2015

Smt. Vidya Devi w/o Shri Puran Chand, r/o V.P.O. Sainthal, Tehsil Joginder Nagar, District Mandi, H.P.

.....*Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D. Joginder Nagar, District Mandi, H.P.

.....*Respondent.*

03-07-2015 Present: Sh. N.L. Kaundal, A.R. for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Letter of authorisation has been filed by Sh. N.L. Kaundal, authorised representative for the petitioner which be placed on record. Heard. Authorised representative for the petitioner has made a statement that he does not want to proceed with this present reference and has prayed its

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.40 P.M. None appearance of petitioner or his Id. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:

03-07-2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 40/ 2015

Sh. Amit Kumar s/o Shri Gian Chand, r/o Village Dibdiaun, P.O. Ladhbharol, Tehsil Joginder Nagar, District Mandi, H.P.

.....*Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.

.....*Respondent.*

03-07-2015

Present:

None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.25 A.M. Be awaited and put up after lunch hours.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

03-07-2015

Present:

None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.37 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:

03-07-2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 37/ 2015

Sh. Naveen Kumar s/o Sh. Swaru Ram, r/o Village Passal, P.O. Chauntra, Tehsil Joginder Nagar, District Mandi, H.P.

.....Petitioner.

Versus

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.

.....Respondent.

03-07-2015 Present: None for the petitioner.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.20 A.M. Be awaited and put up after lunch hours.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

03-07-2015 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.35 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:

03-07-2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 158/ 2013

Sh. Subhash Chand s/o Shri Gorkhu Ram, r/o V.P.O. Ramerh (Deharu), Tehsil & District Kangra, H.P.

.....*Petitioner.*

Versus

The Employer, Trig Detective Private Limited, The Retreat, Phagli, District Shimla-4.

.....*Respondent.*

06-07-2015

Present:

None for the petitioner.

Sh. Manish Katoch, adv. vice of Sh. Subodh Burathoki, adv. csl. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.15 A.M. Be awaited and put up after lunch hours.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

06-07-2015

Present:

None for the petitioner.

Sh. Manish Katoch, adv. vice of Sh. Subodh Burathoki, adv. csl. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.50 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:
06-07-2015

(K.K.Sharma)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 190/ 2015

Sh. Umesh Kumar s/o Shri Hira Singh, r/o Village Karwada, P.O. Langna, Tehsil Joginder Nagar, District Mandi, H.P.

.....Petitioner.

Versus

The Executive Engineer, B&R Division H.P.P.W.D. Joginder Nagar, District Mandi, H.P.

.....Respondent.

08-07-2015

Present:

None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due service. It is 11.35 A.M. Be awaited and put up after lunch hours.

(K.K.Sharma)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).*

08-07-2015

Present:

None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.55 P.M. None appearance of petitioner or his ld. counsel today is indicative of the fact that

petitioner is not interested to pursue present reference and accordingly reference is disposed off for non-prosecution.

Reference is answered in the aforesaid terms.

The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:
08-07-2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. : 10/2013

Shri Chiman Lal s/o Shri Tulsi Ram, r/o Village Ghadyara, P.O. Rajehar, Tehsil Palampur,
District Kangra, H.P.

.....Petitioner.

Versus

The Executive Engineer, HPPWD (B&R) Division Baijnath, District Kangra, H.P.

.....Respondent.

10-07-2015

Present:

Petitioner with Sh. N.L. Kaundal, A.R.

Sh. Sanjeev Singh Rana, Dy.D.A.for the respondent.

Sh. Raj Kumar Sharma, Labour Officer-cum-Conciliation
Officer, Kangra, H.P. in person with the records of case.

Heard. Vide letter no.11-1/85(Lab)ID/2013/Kangra, Government of Himachal Pradesh Department of Labour & Employment dated 4-07-2015 received from Deputy Labour Commissioner, Himachal Pradesh it has been intimated that petitioner/claimant had earlier moved an application dated 09-04-2015 concerning corrigendum to the Labour Commissioner enclosed revealing that he did not have any dispute with Executive Engineer HPPWD, Baijnath or any other agency. He has also stated in aforesaid letter that he has not authorised any one to file any claim in any Court besides, petitioner has already been regularised and working as regular beldar. At this

Accordingly, present reference received is, thus, dismissed as withdrawn.

- (K.K.Sharma)**
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

Ref: No. 139/ 2015

.....*Petitioner.*

Versus

.....Respondent.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

10-07-2015 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 3.15 P.M. None appearance of petitioner is manifestly suggestive of the facts that the petitioner is no more interested to pursue present reference as his counsel is not present today who was present on the previous date of hearing as well as no past proceedings of this case. Due to non-attendance of petitioner or his ld. counsel today, the present reference is hereby dismissed for nonprosecution.

Reference is answered in the aforesaid terms.

The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:
10-07-2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 48/ 2015

Smt. Roshani Devi w/o Shri Roop Lal alias Bhoop Singh, r/o Village Sadhot, P.O. Sadhot, Tehsil Sarkaghat, District Mandi, H.P.

.....Petitioner.

Versus

The Executive Engineer, B&R Sub- Division H.P.P.W.D., Dharampur, District Mandi, H.P.
.....Respondent.

10-07-2015 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite last opportunity for filing of statement of claim. It is 11.35A.M. Be awaited and put up after lunch hours at 2.30 P.M.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

10-07-2015 Present: None for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.55 P.M. None appearance of petitioner is manifestly suggestive of the facts that the petitioner is no more interested to pursue present reference as his counsel is not present today who was present on the previous date of hearing as well as no past proceedings of this case. Due to non-attendance of petitioner or his ld. counsel today, the present reference is hereby dismissed for nonprosecution.

Reference is answered in the aforesaid terms.

The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:
10-07-2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. 183/ 2013

Shri Sandeep s/o Shri Balraj, r/o Village Chhatra, P.O. Bedarwal, Tehsil Haroli, District Una, H.P.

.....*Petitioner.*

Versus

The Managing Director, M/S Cozy Touch Polyfoarms (P) Limited, Village and P.O. Hir Thada (Laluwal), Tehsil Haroli, District Una, H.P.

.....*Respondent.*

14-07-2015 Present: None for the petitioner.
Sh. Manish Kumar, Assistant (HR) for the respondent.

Case called several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours at 2.30 P.M.

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

14-07-2015 Present: None for the petitioner.
Sh. Manish Kumar, Assistant (HR) for the respondent.

Case has been called again several times but none has appeared on behalf of the petitioner. It is 2.50 P.M. None appearance of petitioner is manifestly suggestive of the facts that the petitioner is no more interested to pursue present petition/reference as he is not present today who was present on the previous date of hearing. Due to non-attendance of petitioner or his counsel today, the present claim petitioner/reference is hereby dismissed for non-prosecution.

Reference is answered in the aforesaid terms.

The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:
14-07-2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.**

Ref: No. : 249/2013

The General Secretary HPPWD Mazdoor Ekta Union (CITU) Mandal Committee, c/o
Thakur Hira Singh Bhawan, Near Nirmla Printing Press Joginder Nagar, District Mandi, H.P.
.....*Petitioner.*

Versus

The Executive Engineer, B&R Division H.P.P.W.D. Joginder Nagar, District Mandi, H.P.
.....*Respondent.*

21-07-2015 Present: Sh. Suresh Kumar Sharma, adv. csl. for the petitioner.
Sh. Sanjeev Singh Rana, Dy.D.A.for the respondent.

Power of attorney has been filed by Sh. Suresh Kumar Sharma, adv. csl. for the petitioner which be placed on record. Heard. Ld. csl. for the petitioner has made a separate statement that he does not want to proceed with this present reference and has prayed its dismissal.

Accordingly, present reference is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.

3. The reference is answered in the aforesaid terms.
4. Let copy of the Order/Award be sent to the appropriate Government for information and further necessary action / publication.
5. The file, after completion be consigned to the records.

Announced:
21.07.2015

(K.K.Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 74/2014
Date of Institution : 22.2.2014
Date of decision : 21.07.2015

Shri Desh Raj s/o Shri Anant Ram, r/o VPO Kosarian, Tehsil Jhanduta, Distt. Bilaspur, H.P.
...*Petitioner*

Versus

The Divisional Forest Officer, Bilaspur, Distt. Bilaspur, H.P.
....*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Desh Raj s/o Sh. Anant Ram, R/O Village & PO Kosrian, Tehsil Jhanduta, Distt. Bilaspur, H.P. by the Divisional Forest Officer, Bilaspur Division, H.P. during November, 1999 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what benefits, including reinstatement, amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Averments made in the claim petition revealed that petitioner was appointed as daily waged beldar in the year 1991 at Kalol forest Division and remained employed till 1999 who rendered services under the control of Divisional Forest Officer, Forest Division Bilaspur. It is alleged that in the year 1998 petitioner had worked for 248 days, in the year 1999 till 31st October, 1999 he had worked for 240 days when his services were terminated without any valid reason. The petitioner claims to have been removed from service without notice orally on 1.11.1999. The grievance of petitioner remains that his name was not included in seniority list prepared by respondent/department and that several workmen namely Mehar Singh, Bhura Ram, Rajkumar, Jamaldin, Prem Lal, Balkrishan, Daulat Ram, Krishan Chand, Baliram, Bhajan Singh, Mehar, Raj Kumar, Prem Lal, Pritam Chand and Smt. Usha Devi were junior to him have been regularized according to seniority list placed on record. It is alleged that petitioner requested time and again to respondent to reemploy him but his request was not accepted. Thus, petitioner alleges violation of the provisions of Section 25-F (a), 25-F (b), 25-G and 25-H of the Industrial Disputes Act as the act of the respondent is an unfair labour practice. The petitioner further alleges that he was unemployed who has not so far got any employment and was liable to be reinstated in service with all consequential benefits.

4. The respondent resisted the claim petition, filed reply inter-alia taken preliminary objections of maintainability, petition being bad on account of delay and laches. On merits admitted that petitioner was engaged as a casual labourer in the year 1993 when worked merely for 18 days initially and thereafter he was again engaged in 1998 to 1999. It is alleged that details of mandays chart was provided to the petitioner during conciliation proceedings before the Labour-cum-Conciliation Officer in which it was also stipulated that petitioner had worked intermittently and rendered his services in forestry work which was seasonal in nature. It is also contended that respondent was not removed from service instead petitioner himself had abandoned the work who did not resume work since November, 1999. It has been also claimed that petitioner has not completed 240 days in each calendar year for such 10 years and that the petitioner had abandoned job of his own sweet will whose services had never been terminated by respondent. It is also stated that petitioner having not fulfilled the criteria for regularization and having not reported for duty was not entitled to be reinstated as the petitioner has never approached the respondent department so there can be no violation of the provisions of Section 25-H of the Industrial Disputes Act. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition. He has also asserted that his name has not been incorporated in the seniority list and that he did not abandon job of his own rather respondent had orally terminated his services without any notice which was an unfair labour practice under the relevant Act.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B mandays chart of Sunder Ram, Ex. PW1/C is mandays chart of Garja Ram, demand notice dated 13.9.2005 is Ex. PW1/D, Ex. PW1/E is the failure report, Ex. PW1/F mandays chart of petitioner, Ex. PW1/G is second failure report, Ex. PW1/H is the copy of reply and closed evidence. On the other hand, respondent had examined Shri H.K. Sarwata, the then Divisional Forest Officer, tendered/proved Ex. RW1/B mandays chart of petitioner, Ex. RW1/C seniority list of daily wages mazdoors as it stood on 31.12.2003 and closed evidence.

7. I have heard the Authorized Representative as well as Ld. Dy. D.A. for respondent, gone through evidence on record carefully relevant for disposal of the present reference.

8. From contentions raised, following issues were framed by my ld. Predecessor on 30.5.2014 for determination.

1. Whether the termination of the services of the petitioner by the respondent in the month of November, 1999 is illegal and unjustified as alleged? OPP
2. Whether the claim petition is not maintainable in the present form? OPR
3. Whether the petition is hit by vice of delay and laches as alleged. If so, its effect? OPR
4. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. Admittedly, petitioner remained engaged by respondent in the year 1993 as daily waged beldar in the forest department Bilaspur Division although petitioner claimed to have employed/engaged in the year 1991 and 1999 but there is no corresponding evidence on record to that effect except that petitioner had worked for 18 days in 1993 as per mandays chart Ex. RW1/B. This document further shows that petitioner had worked for and 45 days in 1996, 19 days in 1997, 248 days in 1998 and thereafter petitioner worked for 248 days in 1999 respectively. The case of petitioner simplicitor is that his services had been orally terminated on 1.11.1999 by the respondent whereas the plea of respondent on the other hand remained that petitioner had himself abandoned the job who did not report for duty. As such, respondent having not removed petitioner from service, it cannot be construed as termination from the side of respondent. To appreciate controversy in issue it will be relevant to go through the oral as well as documentary evidence on record led by the parties in the support of their respective contentions.

11. In so far as the plea of petitioner that respondent having violated the mandatory provisions of Section 25-F of the Industrial Disputes Act is concerned, suffice would be to state here that prior to his termination orders, petitioner had worked for more than 240 days in two years preceding calendars. For the applicability of provisions of Section 25-F of the Act, it is necessary that petitioner should have worked continuously for 240 days or more in a calendar year immediately preceding his termination. In the case in hand, petitioner has sworn in affidavit Ex. PW1/A in which he has stated in unequivocal term that in the year 1998 he had rendered service in the Forest Division Bilaspur for 248 days and similarly he had worked for 248 days in 1999 also on 1st November, 1999, his services were illegally terminated. It is manifest from evidence of petitioner that despite his seniority name of petitioner was not incorporated in the seniority list Ex. RW1/C as on 31.12.2003. As per plea of the respondent, name of petitioner was not incorporated in Seniority List because he had worked less than 240 days in preceding 10 years whereas the case of petitioner remains that he has worked for more than 240 days immediately preceding his

termination by the respondent ignoring that several persons junior to petitioner namely Mehar Singh, Balkrishan and others as stated above have been made regular and their names have been incorporated in the seniority list dated 31.12.2003. Be it noticed that several persons junior to petitioner have been regularized in service by respondent which is in violation of provisions of Section 25-G of the Industrial Disputes Act. In cross-examination, petitioner has admitted that from 1999 to 2000, he had not moved any application but maintained that he had gone to Divisional Forest Officer and Range Officer demanding for work. He has although admitted that he was given work whenever he went to the respondent who has taken plea of 'abandonment' as against the petitioner. It is settled law that plea of abandonment has to be proved like any other fact. Since 'abandonment' or 'absence' from duty is serious misconduct it was essential for respondent to have issued notice to join and in default to have initiated departmental proceedings. Having not done so, merely because petitioner did not assume duty cannot be construed that petitioner had decided to abandon the job. As such, bald plea of respondent that petitioner had abandoned the job cannot be accepted instead version of petitioner deserves to be accepted in which he had deposed about termination of his services by verbal order.

12. To appreciate the plea of retention of junior workmen in service and termination of services of petitioner, it would be relevant to refer to mandays chart of one Sunder Ram s/o Lahnoo Ram showing this workman was engaged in June, 2009 who worked for 30 days initially and is shown to working till 2013 whereas the services of petitioner have been terminated much earlier, who was admittedly employed with respondent in 1993 and thereafter in 1998 and 1999. Similarly PW1/C is the mandays chart of Garja Ram which showed from 1999 to 2012 there was no working days but in the month from April, 2013 to June, 2013 this workman had worked for 61 days. Close scrutiny of mandays chart referred to above would establish that petitioner was removed in November, 1999 whereas Sunder Ram and Garja Ram were appointed in the year 2009 respectively. Although both theses workmen had been engaged later than petitioner but they have since been regularized. It has nowhere come in the evidence of respondent that any notice was ever issued to petitioner calling upon him to join for duties. Thus retaining juniors in service is manifestly suggestive of fact that principle of 'Last come First go' envisaged under Section 25-G was not followed and there is clear cut violation of this provision of Industrial Disputes Act. Similarly, plea of respondent that petitioner did not meet out of the criteria for regularization and not entitled for protection of provisions of Section 25-F of the Act, suffice would be stated here that petitioner was admittedly not provided job after 1st November, 1999 and prior to it in the same year he had worked for 248 days which goes to establish that immediately preceding his termination in the year 1999, he had worked for 240 days in the year 1999. Even in year 1998 he had worked for 248 days. This fact having not been disputed by respondent there being nothing to show that that any notice or compensation in lieu of thereto was ever paid to petitioner, it would be unsafe to hold that petitioner has is not entitled to protection under Section 25-F of the Act rather there is cogent and relevant evidence establish that respondent has violated the provisions of Section 25-F of the Industrial Disputes Act.

13. Another aspect highlighted by Id. authorized representative for petitioner is that provisions of Section 25-H of the Act had also not been followed in as much as that the petitioner was not called upon to join duty before engaging other persons. For the applicability of the provisions of Section 25-G and 25-H of the Act it is not necessary that the workman should have worked for more than 240 days as has been held in case titled as **Central Bank of India vs. S. Satyam**, reported in **1996 (5) SCC 419**. The case of petitioner remains that petitioner had worked for more than 240 days preceding date of termination from service and respondent is held to have violated the provisions of Section 25-F (a), 25-F (b), 25-G and 25-H of the Industrial Disputes Act. As far as the petitioner being gainfully employed ever since his termination it has been admitted by the petitioner that he had agricultural land and he worked as labourer during the period of unemployment. Thus, it cannot be construed that petitioner was not gainfully employed but being a

person ageing 42 years when examined before Court in 2014 who would be below 30 years in the year 1999 when his services were terminated could not have remained idle, certainly earning his livelihood. As such, petitioner is held to have remained gainfully employed from agricultural income as well as working as labourer during period of unemployment from job. Issue in hand is decided accordingly.

ISSUE NO. 2

14. There is nothing in pleadings and evidence on record adduced by respondent which would show that claim petition is not maintainable. Petitioner being aggrieved by his termination in the year 1999 by respondent when petitioner had worked for more than 240 days to years 1998-1999 who was entitled for protection of provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, the petition is held to be maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.3

15. Ld. Dy. D.A. representing respondent department has vehemently contended that there is delay in filing the claim petition and raising industrial dispute. RW1 Divisional Forest Officer Bilaspur has maintained that petitioner had left the service of his own who did not approach the department after 1999. The failure report under Section 12 (4) of the Act was submitted preceded by demand notice before the Labour-cum-Conciliation Officer Bilaspur who after examining the report found that the workman had not completed 240 days in preceding 12 months envisaged under Section 25-F of the Act. He declined to make reference to the Labour Commissioner thereafter per averments made in the notification dated 24th January, 2014 on record, Divisional Forest Officer Bilaspur vide letter dated 28.9.2011 sent revised working days details of petitioner which showed that he had worked for 248 days in the year 1998 and 1999. Thus earlier reference having been declined by Labour-cum-Conciliation Officer Bilaspur on the basis of incorrect details of working days and after getting the correct figures of working days the matter has since been sent for adjudication before this court. Ld. authorized representative of petitioner repudiating the arguments has contended that the relief sought for by the petitioner could not be declined only on the ground of delay and laches. In support of his contention placed reliance upon the judgment in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay.

16. Ld. Dy. D.A. representing respondent has contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner with respondent, he was not offered any appointment or absorbed by the

government or the respondent. In view of forgoing discussion thus appears to be reasonable delay on the part of petitioner in agitating his claim initially before Labour-cum-Conciliation Officer Bilaspur who did not have correct figures of working days which was later rectified in pursuance to letter dated 28.9.2011 and thereafter it was detected that petitioner had worked for 248 days which was more than 240 days. It is for the applicability of Section 25-F of Industrial Disputes Act and accordingly the matter was referred for adjudication. The petitioner is simple illiterate villager and not conversant with the intricacy of law of limitation and keeping in view it would be in the interest of justice that delay having been reasonably be explained as stated above, the present claim petition cannot stated to be hit by the vice of delay and laches. Issue in question thus accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

17. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith who shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 02/2013

Date of Institution : 02.01.2013

Date of decision : 21.07.2015

Shri Kurum Dutt s/o Shri Dabar, r/o Village Devdhar, P.O. & Sub Tehsil Bali Chowki,
District Mandi, H.P. ...Petitioner

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Gohar District Mandi, H.P. ...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.P. Sharma, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether regularization of services of Shri Kurum Dutt S/O Shri Dabar, R/O Village Devdhar, P.O. & Sub Tehsil Bali Chowki, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, w.e.f. January, 2007 instead of year, 2004 after completion of 12 years continuous service, as alleged by the worker, is legal, maintainable, if not, what amount of difference of wages, salary, seniority, past service benefits and completion the above worker is entitled to from the above employer?”

2. After the receipt of the abovestated reference, a corrigendum dated 11th April, 2013 was also received from the appropriate government which reads as under:

“The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.”
be read as The Executive Engineer, B&R Division, H.P.P.W.D. Gohar Distt. Mandi, H.P.”

3. Brief facts as set up in the claim petition reveal that petitioner abovenamed had worked as beldar on daily wages basis with H.P.P.W.D. Sub Division Bali Chowki since 1994 continuously who had completed 240 days in each calendar year. It is alleged that respondent had regularized the services of petitioner vide its separate order dated 20.1.2007. It is alleged that as per the policy of the H.P. government for regularizing services daily waged workers, working in the various department have been decided to be regularized on completion of 10/8 years of services whereas the petitioner has been regularized after completion of about 13 years which was arbitrary and discriminatory in nature. It is alleged that H.P. government had directed all departments to regularize the service of daily waged workers on completion of 8 years instead of 10 years service as welfare measure on pressing demand of the workers. It is alleged that petitioner had already completed 10/8 years of service prior to his regularization orders in the year 2007 and that his services were required to be regularized from 2002 or 2004 but it has been regularized in 2007 and thereafter petitioner claims for regularization and work charge status including arrears of wages as per the decision of H.P. government after completion of 10/8 years of service. Accordingly, petitioner prays that respondent be directed to regularize the services of petitioner w.e.f. 2002 or atleast w.e.f. 2004 as per the H.P. government policy by giving him work charged status as well as arrears of wages and to any other relief, the petitioner is found entitled to. Petition is also supported with affidavit.

4. The respondent contested the claim petition, filed reply inter-alia taken preliminary objections of maintainability and estoppel. On merits admitted that petitioner was employed as beldar on daily wages but maintained that he had joined with respondent in the year 1994 in which he had worked for 268 days but during the year 1995, he had worked only for 118 days as per mandays chart prepared by respondent and thus having not fulfilled the criteria of working with minimum of 240 days in the year 1995, the question of continuous service w.e.f. 1994 did not arise. It is alleged that petitioner had not completed 10 years continuous service with minimum of 240 days in each calendar year on 31.12.2003 as per verdict of Hon'ble Apex court in Mool Raj Upadhyay vs. State of H.P. reported in **1994 SCC, Supl. (2) 316** and therefore question of regularization of petitioner w.e.f. 2002 or 2004 as claimed by petitioner did not arise. It is alleged that vide notification No.PBW-A-B(1)6/2003-Loose dated 18.2.2008 government of H.P. had created 7842 tenure posts of various categories for regularization with retrospective effect had been creating and that policy in question postulated that those who had completed 10 years or more with minimum of 240 days in each calendar year as on 31.12.1999, 31.12.2000, 31.12.2001, 31.12.2002 and 31.12.2003 would be regularized and it however was made clear that daily waged workers who

though were engaged during 1993 had not completed 240 days during calendar year shall not be considered for their retrospective regularization against these tenure posts. It is alleged that petitioner had been engaged in 1994 and not in 1993 who had rendered 118 working days in 1995 and therefore he could not be considered for retrospective regularization as per this policy. It is further claimed that government had made rules regarding regularization of daily waged workers vide which only daily waged worker who had completed 8 years of continuous service with minimum of 240 days in each calendar year were eligible for consideration for regularization **against the available vacancies**. Moreover, these regularization were made strictly as per Division wise/category wise seniority list of the department and that petitioner was not eligible for regularization as per above rules. It is categorically pleaded that as per the policy of H.P. government for regularization the petitioner had not completed 10 years of continuous service upto 31.12.2003 and therefore petitioner was not regularized w.e.f. 1.1.2004 and for similar reasons petitioner is stated to be not entitled for arrears of wages and accordingly petition was sought to be dismissed.

5. The petitioner has filed rejoinder to reply filed by respondent, reiterated his stand as maintained in the claim petition. It is claimed that principle laid down for regularization of daily wages workers submitted by state government and as approved in Mool Raj Upadhyay's case by the Hon'ble Supreme Court of India petitioner ought to have been regularized from 2002 or 2004. Accordingly, petition has prayed to be allowed.

6. To prove case, petitioner had examined himself as PW1 sworn in affidavit Ex. PW1/A under Order 18 Rule 4 CPC, tendered/proved Ex. PW1/B copy of office order dated 20.1.2007, Ex. RA is mandays chart of petitioner and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Jatinder Singh, Executive Engineer, HPPWD, Gohar as RW1 who tendered/proved his affidavit Ex. RW1/A and mandays chart Ex. RW1/B relating to petitioner and closed evidence.

7. I have heard the Authorized Representative as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

8. From contentions raised, following issues were framed by my ld. predecessor on 10.12.2013 for determination.

1. Whether the regularization of the services of the petitioner by the respondent in the month of January, 2007 instead of the year 2004 is illegal and unjustified as alleged?

OPP

2. Whether the claim petition is not maintainable in the present form?

OPR

3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect?

OPR

4. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : No

Relief: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. Factum of petitioner being engaged as beldar on daily wage basis since 1994 with the respondent is not in dispute. It is also not in dispute that the services of petitioner has been regularized w.e.f. 20.1.2007 as is evident from Ex. PW1/B on record. The grievance of the petitioner remains that respondent in violation of regularization of policy of State Government has not regularized the services of petitioner from 2002 or 2004 but from 2007 and thus petitioner claimed to have been discriminated in as much as he had rendered 13 years of service by that time. Thus petitioner claims to be given work charge status including arrears of wages in view of regularization policy. Thus, it would therefore be relevant to consider the plea of petitioner in the light of regularization policy of State of H.P. as stated above under which petitioner is claiming relief.

11. Stepping into witness box as PW1, petitioner Kurum Dutt has sworn his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulated therein averments made in the claim petition. He has specifically specified on oath that his services ought to have been regularized from 2002 or 2004 as per government policy of regularization and that the respondent had regularized him in 2007. In the cross-examination, he has denied to have been regularized as per policy of the government although admitted that he had been engaged in 1994. Repudiating the evidence led by petitioner, respondent has examined Shri Jatinder Singh RW1 who has also sworn in affidavit Ex. RW1/A maintained that as per policy of H.P. Government, petitioner had not completed 10 years of service on 31.12.2003 and thus he was not entitled for regularization w.e.f. 1.1.2004. In the witness box he has admitted that petitioner had worked for 240 days in the year 1994 whereas he had worked for 115 days in 1995. Similarly, he admitted that petitioner had worked for 240 days from 1996 to 2006. He has clarified by stating that only those persons have been regularized under the scheme who were employed in 1993. He has also revealed in cross-examination that those workers were to be regularized who had completed eight years of service but subject to availability of vacancy.

12. It is not the case of petitioner that he was engaged by respondent in 1993 but it remains his case that he was engaged in 1994. As per mandays chart Ex. RW1/B, petitioner is shown to have worked for more than 240 days w.e.f. 1996 to 2006 but his case does not fall in the category of those employees who were given regularization retrospectively in pursuance to judgment titled as Mool Raj Upadhyay vs. State of H.P. (supra). Ld. Dy. D.A. representing respondent has contended with vehemence that petitioner has not mentioned anything about Scheme for Betterment (Appointment) Regularization of Muster-Roll/Daily-Wagers in Himachal Pradesh and thus petition is not specifically stipulating about scheme of which petitioner wants to avail benefit. Attention of this court invited to para no. 4 of the judgment in which it is clearly provided that **daily waged/muster roll workers/ whether skilled or unskilled, who had completed 10 years or more of continuous service with a minimum of 240 days in a calendar year on 31.12.1993, shall be appointed as work-charged employees with effect from 1.1.1994 and shall be put in the time-scale of pay applicable to the corresponding lowest grade in the Government.** A bare glance at the above said provisions would show that those daily waged/muster roll workers were to be regularized w.e.f. 1.04.1994 who had completed 10 years of service or more with a minimum of 240 days in a calendar year upto 31.12.1993. If any workman had worked upto 1993 he was to be appointed as work charge employee w.e.f. 1.4.1994. In the case in hand before this court, Kurum

Dutt had been appointed in April, 1994. If petitioner was not employed in 1993, he would not at all be given benefit of judgment of Mool Raj Upadhyaya's case or policy made there-under by the State Government. This view was clarified by the Hon'ble High Court of H.P. in landmark judgment of Hon'ble High Court of H.P. titled as **Gauri Dutt & Ors. vs. State of H.P.** reported in **Latest HLJ 2008 (HP) 366** in which the Hon'ble High Court has in unequivocal terms has held that the scheme as approved by Hon'ble Supreme Court in Mool Raj Upadhyaya's case clearly provided that scheme of putting the workers as work charged basis and as approved by Supreme Court was one time scheme and it was not continuing scheme. It was specifically observed that this scheme had approval of the Hon'ble Supreme Court which did not apply **to those employees who had not completed even one year of service as on 31.12.1993 or who were employed thereafter.** As was observed by the Hon'ble High Court of H.P. the scheme was one time scheme dealing with the employees who had rendered sufficient service upto 31.12.1993, Ld. counsel for petitioner repudiating arguments of ld. Dy. D.A. has relied upon the judgment of State of H.P. & Ors. vs. Gehar Singh reported in **Latest HLJ 2006 (SC) 363**. I have gone through the judgment of Hon'ble High Court of H.P. (2008 supra) which reference of Gehar Singh (supra) was made by Hon'ble High Court and the relevant para is reproduced below:

“.....The scheme as referred to in the case of Mool Raj Upadhyaya envisages two stages in regularizing the service of the Daily Wage/Muster Roll workers. In the **first stage**, after completion of 10 years or more continuous service with a minimum of 240 days in a calendar year on 31st December, 1993, Daily Wage/Muster Roll workers were to be appointed as work-charged employees with effect from 1st January, 1994. Thereafter they were to be regularized in the second stage in a phased manner on the basis of seniority cum suitability including physically fitness. Even while challenging the direction given by the Himachal Pradesh Administrative Tribunal on 23rd October, 2003, the State of Himachal Pradesh made out a case that the respondents were claiming regularization of their services with effect from 1st April, 1998. It was also urged that it had been brought to the notice of the Tribunal that the respondents were daily waged workers and as per the instructions dated 6th May, 2000, they were entitled for work charged status only as and when the posts were sanctioned by the State Government in a phased manner strictly on the basis of seniority. The aforesaid case made out by the State of Himachal Pradesh before the High Court was a clear departure from the directions given in Mool Raj Upadhyaya's case. The respondents had only claimed the benefit of the Betterment Scheme which was placed before this Court in Mool Raj Upadhyaya's case and had prayed for work charged status from 1st January, 2000, before the Tribunal whereas the change in policy was brought about on 6th May, 2000. It is on that basis that the Tribunal directed that the respondents be given work charged status with effect from 1st January, 2000. Notwithstanding the fact that the services of the respondents have been regularized with effect from 1st January, 2003 and they have joined their posts from that date without protest, they cannot, in our view, be denied the benefits as directed to the given to them by the Tribunal and affirmed by the High Court which had already accrued to them under the Scheme which was approved in Mool Raj Upadhyaya's case....”

It was observed by the Hon'ble High Court of H.P. that as per perusal of above referred scheme it was prepared by the State of H.P. and submitted to the Hon'ble Apex Court in Mool Raj Upadhyaya's case clearly shows that the scheme only dealt with the employees who had completed 10 years or more continuous service with a minimum 240 days in each calendar year. In the aforesaid judgment, there is no ambiguity qua scheme, scheme being one time applicable to those workmen who had rendered sufficient service 31.12.1993. Thus, it would not be erroneous to conclude that petitioner having not joined or worked with respondent in 1993 was not at all entitled for benefit of policy qua putting worker as work charged basis framed by State Government and approved by the Hon'ble Apex Court in Mool Raj Upadhyaya's case.

13. Ld. Dy. D.A. for State has contended that merely because a workman has completed minimum number of years of service would not ipso facto entitle him regular appointment or work charge status as availability of vacancies was also an important aspect to be considered. It is nowhere the case of petitioner that vacancies were available who had although completed required number of service years for his regularization instead petitioner was factually not at all covered under the scheme of State of H.P. for regularization with retrospective effect having not been appointed in 1993 as stated in foregoing paras and therefore question of his regularization w.e.f. 1.1.2004 did not arise. In view of the foregoing discussion, issue in hand is answered in negative against petitioner and in favour of respondent.

ISSUE NO.2

14. Ld. Dy. D. A. for state has contended that petition filed by claimant/petitioner in the present form is not maintainable. In support of his contention, he has taken stand through the judgment of Hon'ble Apex Court titled as Mool Raj Upadhyay vs. State of H.P. reported in **1994 SCC, Supl. (2) 316** and subsequent judgment of Hon'ble High Court of H.P. titled as Gauri Dutt & Ors. vs. State of H.P. reported in **Latest HLJ 208 (HP) 366**, in both these judgments, the Hon'ble Courts have consistently held that if claimant/petitioner was not employed in the year 1993 or who had not rendered atleast 240 days of service in each calendar year or even in year 1993 he could not claim benefit of scheme which was one time scheme dealing with employee who has rendered sufficient service upto 31.12.1993. If the petitioner was not covered under scheme, certainly his petition is held to be not maintainable. Accordingly, issue in question is answered in affirmative against petitioner and in favour of respondent.

ISSUE NO.3

15. Ld. Dy. D.A. for State has contended that petitioner is estopped to file the present petition by his act and conduct. It has come in the evidence that the services of petitioner have been regularized in the year 2007 who claimed regularization of service as well as work charge status w.e.f. 2002/2004. The plea of respondent is not specific in what manner the petitioner is not entitled to agitate claim for his regularization, as pleaded in the claim petition. Accordingly, issue no.3 is decided negative in favour of petitioner and against respondent.

RELIEF

16. As a sequel to my findings on the issues no. 1 & 2, the instant claim petition is dismissed, leaving the parties to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 03/2013

Date of Institution : 02.01.2013

Date of decision : 21.07.2015

Shri Chitter Singh s/o Shri Tohli, r/o Village Naicha, P.O. & Sub Tehsil Bali Chowki,
District Mandi, H.P. ...Petitioner

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Gohar District Mandi, H.P. ...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.P. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether regularization of services of Shri Chitter Singh S/O Shri Tohli, R/O Village Naicha, P.O. & Sub Tehsil Bali Chowki, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. w.e.f. January, 2007 instead of year, 2004 after completion of 12 years continuous service, as alleged by the worker, is legal, maintainable, if not, what amount of difference of wages, salary, seniority, past service benefits and compensation the above worker is entitled from the above employer?”

2. After the receipt of the abovestated reference, a corrigendum dated 11th April, 2013 was also received from the appropriate government which reads as under:

“The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.”
be read as The Executive Engineer, B&R Division, H.P.P.W.D. Gohar Distt. Mandi, H.P.”

3. Brief facts as set up in the claim petition reveal that petitioner abovenamed had worked as beldar on daily wages basis with H.P.P.W.D. Sub Division Bali Chowki since 1994 continuously who had completed 240 days in each calendar year. It is alleged that respondent had regularized the services of petitioner vide its separate order dated 20.1.2007. It is alleged that as per the policy of the H.P. government for regularizing services daily waged workers, working in the various department have been decided to be regularized on completion of 10/8 years of services whereas the petitioner has been regularized after completion of about 13 years which was arbitrary and discriminatory in nature. It is alleged that H.P. government had directed all departments to regularize the service of daily waged workers on completion of 8 years instead of 10 years service as welfare measure on pressing demand of the workers. It is alleged that petitioner had had already completed 10/8 years of service prior to his regularization orders in the year 2007 and that his services were required to be regularized from 2002 or 2004 but it has been regularized in 2007 and

thereafter petitioner claims for regularization and work charge status including arrears of wages as per the decision of H.P. government after completion of 10/8 years of service. Accordingly, petitioner prays that respondent be directed to regularize the services of petitioner who be given work charge status including arrears of wages w.e.f. 2002 or atleast w.e.f. 2004 as per the H.P. government policy by giving him work charged status as well as arrears of wages and to any other relief, the petitioner is found entitled to. Petition is also supported with affidavit.

4. The respondent contested the claim petition, filed reply inter-alia taken preliminary objections of maintainability and estoppel. On merits admitted that petitioner was employed as beldar on daily wages but maintained that he had joined with respondent in the year 1994 in which he had worked for 260 days but during the year 1995, he had worked only for 115 days as per mandays chart prepared by respondent and thus having not fulfilled the criteria of working with a minimum of 240 days in the year 1995, the question of continuous service w.e.f. 1994 did not arise. It is alleged that petitioner had not completed 10 years continuous service with minimum of 240 days in each calendar year on 31.3.2003 as per verdict of Hon'ble Apex court in Mool Raj Upadhyay vs. State of H.P. reported in **1994 SCC, Supl. (2) 316** and therefore question of regularization of petitioner w.e.f. 2002 or 2004 as claimed by petitioner did not arise. It is alleged that vide notification No.PBW-A-B(1)6/2003-Loose dated 18.2.2008 government of H.P. had created 7842 tenure posts of various categories for regularization with retrospective effect had been creating and that policy in question postulated that those who had completed 10 years or more with minimum of 240 days in each calendar year as on 31.12.1999, 31.12.2000, 31.12.2001, 31.12.2002 and 31.12.2003 would be regularized and it however was made clear that daily waged workers who though were engaged during 1993 had not completed 240 days during calendar year shall not be considered for their retrospective regularization against these tenure posts. It is alleged that petitioner had been engaged in 1994 and not in 1993 who had rendered 118 working days in 1995 and therefore he could not be considered for retrospective regularization as per this policy. It is further claimed that government had made rules regarding regularization of daily waged workers vide which only daily waged workern who had completed 8 years of continuous service with minimum of 240 days in each calendar year were eligible for consideration for regularization **against the available vacancies**. Moreover, these regularization were made strictly as per Division wise/category wise seniority list of the department and that petitioner was not eligible for regularization as per above rules. It is categorically pleaded that as per the policy of H.P. government for regularization the petitioner had not completed 10 years of continuous service upto 31.12.2003 and therefore petitioner was not regularized w.e.f. 1.1.2004 and for similar reasons petitioner is stated to be not entitled for arrears of wages and accordingly petition was sought to be dismissed.

5. The petitioner has filed rejoinder to reply filed by respondent, reiterated his stand as maintained in the claim petition. It is claimed that principle laid down for regularization of daily wages workers submitted by state government and as approved in Mool Raj Upadhyay's case by the Hon'ble Supreme Court of India petitioner ought to have been regularized from 2002 or 2004. Accordingly, petition has prayed to be allowed.

6. To prove case, petitioner had examined himself as PW1 sworn in affidavit Ex. PW1/A under Order 18 Rule 4 CPC, tendered/proved Ex. PW1/B copy of office order dated 20.1.2007, Ex. RA is mandays chart of petitioner and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Jatinder Singh, Executive Engineer, HPPWD, Gohar as RW1 who tendered/proved his affidavit Ex. RW1/A and mandays chart Ex. RW1/B relating to petitioner and closed evidence.

7. I have heard the Authorized Representative as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

8. From contentions raised, following issues were framed by my ld. predecessor on 10.12.2013 for determination.

1. Whether the regularization of the services of the petitioner by the respondent in the month of January, 2007 instead of the year 2004 is illegal and unjustified as alleged? OPP

2. Whether the claim petition is not maintainable in the present form? OPR

3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? OPR

4. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : No

Issue No.2 : Yes

Issue No.3 : No

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. Factum of petitioner being engaged as beldar on daily wage basis since 1994 with the respondent is not in dispute. It is also not in dispute that the services of petitioner has been regularized w.e.f. 20.1.2007 as is evident from Ex. PW1/B on record. The grievance of the petitioner remains that respondent in violation of regularization of policy of State Government has not regularized the services of petitioner from 2002 or 2004 but from 2007 and thus petitioner claimed to have been discriminated in as much as he had rendered 13 years of service by that time. Thus petitioner claims to be given work charge status including arrears of wages in view of regularization policy. Thus, it would therefore be relevant to consider the plea of petitioner in the light of regularization policy of State of H.P. as stated above under which petitioner is claiming relief.

11. Stepping into witness box as PW1, petitioner Chitter Singh has sworn his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulated therein averments made in the claim petition. He has specifically specified on oath that his services ought to have been regularized from 2002 or 2004 as per government policy of regularization and that the respondent had regularized him in 2007. In the cross-examination, he has denied to have been regularized as per policy of the government although admitted that he had been engaged in 1994. Repudiating the evidence led by petitioner, respondent has examined Shri Jatinder Singh RW1 who has also sworn in affidavit Ex. RW1/A maintained that as per policy of H.P. Government, petitioner had not completed 10 years of service on 31.12.2003 and thus he was not entitled for regularization w.e.f. 1.1.2004. In the witness box he has admitted that petitioner had worked for 240 days in the year 1994 whereas he had worked for 115 days in 1995. Similarly, he admitted that petitioner had worked for 240 days from 1996 to

2006. He has clarified by stating that only those persons have been regularized under the scheme who were employed in 1993. He has also revealed in cross-examination that those workers were to be regularized who had completed eight years of service but subject to availability of vacancy.

12. It is not the case of petitioner that he was engaged by respondent in 1993 but it remains his case that he was engaged in 1994. As per mandays chart Ex. RW1/B, petitioner is shown to have worked for more than 240 days w.e.f. 1996 to 2006 but his case does not fall in the category of those employees who were given regularization retrospectively in pursuance to judgment titled as *Mool Raj Upadhyay vs. State of H.P.* (supra). Ld. Dy. D.A. representing respondent has contended with vehemence that petitioner has not mentioned anything about Scheme for Betterment (Appointment) Regularization of Muster-Roll/Daily-Wagers in Himachal Pradesh and thus petition is not specifically stipulating about scheme of which petitioner wants to avail benefit. Attention of this court invited to para no. 4 of the judgment in which it is clearly provided that **daily waged/muster roll workers/ whether skilled or unskilled, who had completed 10 years or more of continuous service with a minimum of 240 days in a calendar year on 31.12.1993, shall be appointed as workcharged employees with effect from 1.1.1994 and shall be put in the time-scale of pay applicable to the corresponding lowest grade in the Government.** A bare glance at the above said provisions would show that those daily waged/muster roll workers were to be regularized w.e.f. 1.04.1994 who had completed 10 years of service or more with a minimum of 240 days in a calendar year upto 31.12.1993. If any workman had worked upto 1993 he was to be appointed as work charge employee w.e.f. 1.4.1994. In the case in hand before this court, Chitter Singh had been appointed in April, 1994. If petitioner was not employed in 1993, he would not at all be given benefit of judgment of Mool Raj Upadhyay's case or policy made there-under by the State Government. This view was clarified by the Hon'ble High Court of H.P. in landmark judgment of Hon'ble High Court of H.P. titled as **Gauri Dutt & Ors. vs. State of H.P.** reported in **Latest HLJ 2008 (HP) 366** in which the Hon'ble High Court has in unequivocal terms has held that the scheme as approved by Hon'ble Supreme Court in Mool Raj Upadhyay's case clearly provided that scheme of putting the workers as work charged basis and as approved by Supreme Court was one time scheme and it was not continuing scheme. It was specifically observed that this scheme had approval of the Hon'ble Supreme Court which did not apply **to those employees who had not completed even one year of service as on 31.12.1993 or who were employed thereafter.** As was observed by the Hon'ble High Court of H.P. the scheme was one time scheme dealing with the employees who had rendered sufficient service upto 31.12.1993, Ld. counsel for petitioner repudiating arguments of Ld. Dy. D.A. has relied upon the judgment of *State of H.P. & Ors. vs. Gehar Singh* reported in **Latest HLJ 2006 (SC) 363**. I have gone through the judgment of Hon'ble High Court of H.P. (2008 supra) which reference of *Gehar Singh* (supra) was made by Hon'ble High Court and the relevant para is reproduced below:

“.....The scheme as referred to in the case of Mool Raj Upadhyaya envisages two stages in regularizing the service of the Daily Wage/Muster Roll workers. In the **first stage**, after completion of 10 years or more continuous service with a minimum of 240 days in a calendar year on 31st December, 1993, Daily Wage/Muster Roll workers were to be appointed as work-charged employees with effect from 1st January, 1994. Thereafter they were to be regularized in the second stage in a phased manner on the basis of seniority cum suitability including physically fitness. Even while challenging the direction given by the Himachal Pradesh Administrative Tribunal on 23rd October, 2003, the State of Himachal Pradesh made out a case that the respondents were claiming regularization of their services with effect from 1st April, 1998. It was also urged that it had been brought to the notice of the Tribunal that the respondents were daily waged workers and as per the instructions dated 6th May, 2000, they were entitled for work charged status only as and when the posts were sanctioned by the State Government in a phased manner strictly on the basis of seniority. The aforesaid case made out by the State of Himachal Pradesh before the High

Court was a clear departure from the directions given in Mool Raj Upadhyaya's case. The respondents had only claimed the benefit of the Betterment Scheme which was placed before this Court in Mool Raj Upadhyaya's case and had prayed for work charged status from 1st January, 2000, before the Tribunal whereas the change in policy was brought about on 6th May, 2000. It is on that basis that the Tribunal directed that the respondents be given work charged status with effect from 1st January, 2000. Notwithstanding the fact that the services of the respondents have been regularized with effect from 1st January, 2003 and they have joined their posts from that date without protest, they cannot, in our view, be denied the benefits as directed to the given to them by the Tribunal and affirmed by the High Court which had already accrued to them under the Scheme which was approved in Mool Raj Upadhyaya's case...."

It was observed by the Hon'ble High Court of H.P. that as per perusal of above referred scheme it was prepared by the State of H.P. and submitted to the Hon'ble Apex Court in Mool Raj Upadhyaya's case clearly shows that the scheme only dealt with the employees who had completed 10 years or more continuous service with a minimum 240 days in each calendar year. In the aforesaid judgment, there is no ambiguity qua scheme, scheme being one time applicable to those workmen who had rendered sufficient service 31.12.1993. Thus, it would not be erroneous to conclude that petitioner having not joined or worked with respondent in 1993 was not at all entitled for benefit of policy qua putting worker as work charged basis framed by State Government and approved by the Hon'ble Apex Court in Mool Raj Upadhyaya's case.

13. Ld. Dy. D.A. for State has contended that merely because a workman has completed minimum number of years of service would not ipso facto entitle him regular appointment or work charge status as availability of vacancies was also an important aspect to be considered. It is nowhere the case of petitioner that vacancies were available and who had although completed required number of service years for his regularization but petitioner was factually not at all covered under the scheme of State of H.P. for regularization with retrospective effect having not been appointed in 1993 as stated in foregoing paras and therefore question of his regularization w.e.f. 1.1.2004 did not arise. In view of the foregoing discussion, issue in hand is answered in negative against petitioner and in favour of respondent.

ISSUE NO.2

14. Ld. Dy. D. A. for state has contended that petition filed by claimant/petitioner in the present form is not maintainable. In support of his contention, he has taken stand through the judgment of Hon'ble Apex Court titled as Mool Raj Upadhyaya vs. State of H.P. reported in **1994 SCC, Supl. (2) 316** and subsequent judgment of Hon'ble High Court of H.P. titled as Gauri Dutt & Ors. vs. State of H.P. reported in **Latest HLJ 208 (HP) 366**, in both these judgments, the Hon'ble Courts have consistently held that if claimant/petitioner was not employed in the year 1993 or who had not rendered atleast 240 days of service in each calendar year or even in year 1993 he could not claim benefit of scheme which was one time scheme dealing with employee who has rendered sufficient service upto 31.12.1993. If the petitioner was not covered under scheme, certainly his petition is held to be not maintainable. Accordingly, issue in question is answered in affirmative against petitioner and in favour of respondent.

ISSUE NO.3

15. Ld. Dy. D.A. for State has contended that petitioner is estopped to file the present petition by his act and conduct. It has come in the evidence that the services of petitioner have been regularized in the year 2007 who claimed regularization of service as well as work charge status w.e.f. 2002/2004. The plea of respondent is not specific in what manner the petitioner is not entitled

to agitate claim for his regularization as pleaded in the claim petition. Accordingly, issue no.3 is decided negative in favour of petitioner and against respondent.

RELIEF

16. As a sequel to my findings on the issues no. 1 & 2, the instant claim petition is dismissed leaving the parties to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 11/2013

Date of Institution : 18.02.2013

Date of decision : 21.07.2015

Shri Het Ram s/o Shri Karam Singh, r/o Village Kheneti, P.O. Khuhan, Sub Tehsil Aut, Distt. Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, HPPWD Division No.2, Mandi, H.P.

...Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. S.P. Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether non-regularization of services of Sh. Het Ram S/O Sh. Karam Singh, Village Kheneti, P.O. Khuhan, Sub Tehsil Aut, Distt. Mandi, H.P. by The Executive Engineer, HPPWD Division No.2, Mandi, H.P. after completion of 8 years of continuous service

w.e.f. January, 2002 or thereafter as per policy of Govt. of Himachal Pradesh is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. Brief facts as set up in the claim petition reveal that the petitioner abovenamed had worked as beldar on daily wages basis w.e.f. 1994 in H.P.P.W.D. Sub Division Bali Chowki continuously and had thus completed 240 days in each calendar year. As per the policy of the H.P. government for regularizing services daily waged workers working in the various department have been decided to be regularized on completion of 10 years of services whereas the petitioner has been not regularized after completion of about 10 years rather petitioner was retired from the service on attaining the age of superannuation on 30.4.2006 without giving him the benefit of regularization. It is alleged that H.P. government had directed to all departments to regularize the service of daily waged workers on completion of 8 years instead of 10 years service as welfare measure on pressing demand of the workers. It is alleged that petitioner had already completed 8 years of service and his services were required to be regularized from 2001 but the petitioner was not regularized and therefore petitioner claims for regularization and work charge status including arrears of wages as per the decision of H.P. government after completion of 10/8 years of service. Accordingly, petitioner prays that respondent be directed to regularize the services of petitioner who had given work charge status including arrears of wages w.e.f. 2001 as per the H.P. government policy and to any other relief the petitioner is found entitled to. The petition is however supported with affidavit.

3. The respondent contested the claim petition, filed reply wherein respondent had admitted that petitioner has been retired from service on 30.4.2006 as daily waged beldar. It is further admitted that petitioner was employed as beldar on daily waged but maintained that he had joined the respondent in 1994 and worked upto March, 2005 with respondent department in HPPWD Sub Division Banjar and was retired from service on 30.4.2006 as daily waged beldar from Sub Division HPPWD Bali Chowki which was under the control of Division No.1 HPPWD Mandi. It is alleged that petitioner had not completed 10 years continuous service with minimum of 240 days in each calendar year on 31.3.1994 on the basis of verdict of Hon'ble Apex court in Mool Raj Upadhyay vs. State of H.P. reported in **1994 SCC, Supl. (2) 316** as vide notification No.PBW-A-B(i)6/2003-Loose dated 18.2.2008 had created 7842 tenure posts of various categories for regularization with retrospective effect for those workmen who had completed 10 years or more with minimum of 240 days in each calendar year as on 31.12.1999, 31.12.2000, 31.12.2001, 31.12.2002 whereas the petitioner had completed 10 years of continuous service during in December, 2003 and as such petitioner could be considered for regularization. It is further submitted that vide letter no. PWE-133- 11/2008-ES-III-16400-16500 dated 25.2.2008 received from Engineer-in-Chief Shimla, the daily waged workers who were though engaged on daily waged basis during the year 1993 had not completed 240 days shall not be considered for their retrospective regularization against these tenure posts. It is further claimed that government had made rules regarding regularization of daily waged workers vide which only daily waged worker who had completed 8 years of continuous service with minimum of 240 days in each calendar year were eligible for consideration for regularization **against the available vacancies**. Moreover, these regularization were made strictly as per Division wise/category wise seniority list of the department and that petitioner was not eligible for regularization as per above rules before his retirement from service after attaining the age of superannuation. It is further alleged that petitioner has retired from service (on daily wage basis) on 30.4.2006 after completion of 60 years and the respondent department was not able to regularize the service of petitioner being a matter to be dealt at government level. It is also stated that no junior persons had been regularized by the respondent on the date of retirement of the petitioner.

4. The petitioner filed rejoinder to reply filed by respondent, reiterated his stand as maintained in the claim petition. It is claimed that principle laid down for regularization of daily wages workers in Mool Raj Upadhyay's case by the Hon'ble Supreme Court of India as well as State Govt. policy of regularizing of services of daily wages was applicable to petitioner. Accordingly, petition is prayed to be allowed.

5. To prove case, petitioner had examined himself as PW1, tendered/proved Ex. PW1/B demand notice dated 12.7.2009 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Jatinder Singh, Executive Engineer, HPPWD, Gohar as RW1 who tendered/proved his affidavit under Order 18 Rule 4 CPC, , Ex. RW1/B copy of letter dated 18th February, 2008 regarding creation of 7842 tenure posts belonging to various categories for regularization, Ex. RW1/C copy of letter dated 20.2.2008 regarding payment of arrears to eligible daily waged muster roll employees regularized in PWD & IPH as per recent State Govt. decision, Ex. RW1/D is letter dated 25.2.2008, Ex. RW1/E is letter dated 9th September, 2008 regarding regularization of daily waged workers, Ex. RW1/F is the seniority list of petitioner and closed evidence.

6. I have heard the Authorized Representative as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

7. From contentions raised, following issues were framed by my ld. predecessor on 04.10.2013 for determination.

1. Whether the action of the respondent not to regularize the services of the petitioner w.e.f. January, 2002 is illegal and unjustified as alleged?

OPP

2. Relief.

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : No

Relief: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

9. Admittedly, petitioner has retired from service of respondent on attaining the age of superannuation. Factum of petitioner being engaged as beldar on daily wage basis since 1994 with the respondent is not in dispute. The grievance of the petitioner remains that respondent in violation of regularization of policy of State Government as approved by Hon'ble Apex Court in Mool Raj Upadhyay's case has not regularized the services of petitioner from 2002 and thus petitioner claimed to have been discriminated in as much as he had rendered 10 years of service by that time. Thus, petitioner claims to be given work charge status including arrears of wages in view of regularization policy. It would therefore be relevant to consider the plea of petitioner in the light of regularization policy of State of H.P. as stated above under which petitioner is claiming relief.

10. Stepping into witness box as PW1, petitioner Het Ram has sworn his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulated therein averments made in the claim petition. He has specifically specified on oath that his services ought to have been regularized from 2002 as per government policy of regularization. In the cross-examination, he has admitted that he had been engaged in 1994 and no junior person had been regularized. Repudiating the evidence led by petitioner, respondent has examined Shri Jatinder Singh RW1 has also sworn in affidavit Ex. RW1/A who maintained that petitioner was engaged in the month of January, 1994 to carryout various road work etc. with the respondent department and petitioner had worked for more than 240 days in each calendar year upto 2005 but he was retired on 30.4.2006. It is admitted that petitioner had worked as daily waged beldar on daily wage basis in HPPWD Banjar upto 2005. In the witness box, RW1 has admitted that petitioner had worked continuously as daily waged beldar from 1994 to 2006 completing 240 days in each calendar year. It is further admitted that petitioner had worked till March, 2005 at Banjar and thereafter he worked upto 30.4.2006 at Bali Chowki Sub Division Gohar. It is also admitted by RW1 that respondent department could not regularize the services of petitioner after completion of 10 years of service however petitioner had retired and till then no sanctioned posts were available with respondent department. He has clarified by stating that only those persons have been regularized under the scheme who were employed in 1993. He has also revealed in cross-examination that only those workers were to be regularized who had completed eight years of service however subject to availability of vacancy.

11. It is admittedly not the case of petitioner that he was engaged in 1993 but it remains his case that he was engaged in 1994. As per mandays chart Ex. RW1/B, petitioner is shown to have worked for more than 240 days w.e.f. 1994 to 2005 but his case does not fall in the category of those employees who were retrospectively regularized in pursuance to judgment titled as Mool Raj Upadhayay vs. State of H.P. (supra).

12. Ld. Dy. D.A. representing respondent has contended with vehemence that petitioner has not stipulated about Scheme for Betterment (Appointment) Regularization of Muster-Roll/Daily-Wagers in Himachal Pradesh. Attention of this court is invited to **para no. 4** of the judgment in which it is clearly provided that **daily waged/muster roll workers/ whether skilled or unskilled, who have completed 10 years or more of continuous service with a minimum of 240 days in a calendar year on 31.12.1993, shall be appointed as work-charged employees with effect from 1.1.1994 and shall be put in the time-scale of pay applicable to the corresponding lowest grade in the Government.** A bare glance at the above said provision would also show that those daily waged/muster roll workers were to be regularized w.e.f. 1.1.1994 who had completed 10 years of service or more with a minimum of 240 days in a calendar year upto 31.03.1993. If any workman had worked upto 1993 he was to be appointed as work charge employee w.e.f. 1.1.1994. In the case in hand before this court, petitioner had been appointed in April, 1994. If petitioner was not employed in 1993, he could not be given benefit of judgment of Mool Raj Upadhayay's case or policy made there under by the State Government. This view was clarified by the Hon'ble High Court of H.P. in landmark judgment titled as **Gauri Dutt & Ors. vs. State of H.P.** reported in **Latest HLJ 2008 (HP) 366** in which the Hon'ble High Court has in unequivocal terms has held that the scheme as approved by Hon'ble Supreme Court in Mool Raj Upadhayay's case clearly indicated that scheme qua putting worker as work charge basis was **one time scheme** and it was not continuing scheme. It was specifically observed that this scheme as approved by the Hon'ble Supreme Court does not apply **to those employees who had not completed even one year of service as on 31.12.1993 or who were employed thereafter.** It was observed by the Hon'ble High Court of H.P., the scheme was one time scheme dealing with the employees who had rendered sufficient service upto 31.03.1993. Ld. counsel for petitioner has relied upon the judgment of State of H.P. & Ors. vs. Gehar Singh reported in **Latest HLJ 2006**

(SC) 363. I have gone through the judgment of Hon'ble High Court of H.P. which had distinguished case of Gehar Singh (supra) in case titled Gauri Dutt & Ors. vs. State of H.P. and had held as under:-

“.....The scheme as referred to in the case of Mool Raj Upadhyaya envisages two stages in regularizing the service of the Daily Wage/Muster Roll workers. In the first stage, after completion of 10 years or more continuous service with a minimum of 240 days in a calendar year on 31st December, 1993, Daily Wage/Muster Roll workers were to be appointed as work-charged employees with effect from 1st January, 1994. Thereafter they were to be regularized in the second stage in a phased manner on the basis of seniority cum suitability including physically fitness. Even while challenging the direction given by the Himachal Pradesh Administrative Tribunal on 23rd October, 2003, the State of Himachal Pradesh made out a case that the respondents were claiming regularization of their services with effect from 1st April, 1998. It was also urged that it had been brought to the notice of the Tribunal that the respondents were daily waged workers and as per the instructions dated 6th May, 2000, they were entitled for work charged status only as and when the posts were sanctioned by the State Government in a phased manner strictly on the basis of seniority. The aforesaid case made out by the State of Himachal Pradesh before the High Court was a clear departure from the directions given in Mool Raj Upadhyaya's case. The respondents had only claimed the benefit of the Betterment Scheme which was placed before this Court in Mool Raj Upadhyaya's case and had prayed for work charged status from 1st January, 2000, before the Tribunal whereas the change in policy was brought about on 6th May, 2000. It is on that basis that the Tribunal directed that the respondents be given work charged status with effect from 1st January, 2000. Notwithstanding the fact that the services of the respondents have been regularized with effect from 1st January, 2003 and they have joined their posts from that date without protest, they cannot, in our view, be denied the benefits as directed to be given to them by the Tribunal and affirmed by the High Court which had already accrued to them under the Scheme which was approved in Mool Raj Upadhyaya's case....”

It was observed by the Hon'ble High Court of H.P. that as per perusal of above scheme it was prepared by the State of H.P. and submitted to the Hon'ble Apex Court in Mool Raj Upadhyaya's case clearly shows that the scheme only dealt with the employees who had completed 10 years or more continuous service with a minimum 240 days in each calendar year. In the aforesaid judgment, there is no ambiguity about scheme being one time scheme and was applicable to those workmen who had rendered sufficient service as on 31.12.1993. It would not be erroneous to conclude that petitioner having not joined or worked with respondent in 1993 was not entitled for benefit of policy qua putting the worker as work charged basis framed by State Government and approved by the Hon'ble Apex Court in Mool Raj Upadhyaya's case.

13. Ld. Dy. D.A. for State has contended that merely because a workman has completed minimum number of years of service would not ipso facto entitle him regular appointment or work charged status as availability of vacancy was also an important aspect which ought to be considered. It is nowhere the case of petitioner that vacancies were available and had completed required number of service years for his regularization instead petitioner was not at all covered under the scheme having not been appointed in 1993 and therefore question of his regularization w.e.f. 1.1.2004 did not arise. It is significant to mention here that petitioner had retired on 30.4.2006. It is equally admitted case of the petitioner that he had rendered 10 years of regular service with the respondent which were completed in December, 2003 and certainly not on 31.12.1993. In view of the foregoing discussion the issue in hand is answered in negative against petitioner and in favour of respondent.

RELIEF

14. As a sequel to my findings on the issues no. 1 & 2, the instant claim petition is dismissed, leaving the parties to bear their own costs.

15. The reference is answered in the aforesaid terms.

16. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

17. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 243/13

Date of Institution : 09.12.2013

Date of decision : 22.07.2015

1. Shri Rajinder Paul s/o Shri Jeet Ram, r/o Village Chhaproh, P.O. Ladha, Tehsil Ghumarwin, Distt. Bilaspur, H.P.

2. Shri Baldev Raj s/o Shri Salho Ram, r/o Village Chhaproh, P.O. Ladha, Tehsil Ghumarwin, Distt. Bilaspur, H.P.

3. Shri Ramesh Kumar s/o Shri Nika Ram, r/o Village Bari, P.O. Baldwara, Distt. Mandi, H.P.

4. Shri Prem Singh s/o Shri Sundar Singh, r/o Village Luhnu, P.O. Ladha, Tehsil Ghumarwin, Distt. Bilaspur, H.P. *...Petitioners*

Versus

1. The Director of Industries, Udyog Bhawan, Shimla-1, H.P.

2. The Silk Seed Production Officer, Ghumarwin, Distt. Bilaspur, H.P.

....Respondents

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner(s) :

Sh. N.L. Kaundal, AR

Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of (1) Shri Rajinder Paul s/o Shri Jeet Ram, r/o Village Chhaproh, P.O. Ladha, Tehsil Ghumarwin, Distt. Bilaspur, H.P. during the year 1996, 1998 & 2000, (2) Shri Baldev Raj s/o Shri Salho Ram, r/o Village Chhaproh, P.O. Ladha, Tehsil Ghumarwin, Distt. Bilaspur, H.P. during the years 1996, 1998 & 2000, (3) Shri Ramesh Kumar s/o Shri Nika Ram, r/o Village Bari, P.O. Baldwara, Distt. Mandi, H.P. during the year 1996, 2000 & 2003 and (4) Shri Prem Singh s/o Shri Sundar Singh, r/o Village Luhnu, P.O. Ladha, Tehsil Ghumarwin, Distt. Bilaspur, H.P. during the year 1996 & 2000 by the Director of Industries, Udyog Bhawan, Shimla-1, H.P. 2) The Silk Seed Production Officer, Ghumarwin, Distt. Bilaspur, H.P. and non regularization of their services as per policy of H.P. Govt. issued from time to time, is legal and justified? If not, what monetary benefits, including seniority, regularization and compensation the above workers are entitled from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimants/petitioners have jointly filed their statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner nos. 1 to 4 were engaged as daily waged beldars w.e.f. December, 1989, January, 1991, 17.2.1989 and November, 1998 respectively by respondent no.2. It is alleged that petitioners had been engaged and disengaged by respondent no.2 as per direction of respondent no.1 who did not allow petitioners to complete 240 days in continuous service in the years 1996, 1998, 2000 & 2003 as required under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter called ‘the Act’ for brevity) and thereafter services of petitioners had been engaged since 2001 without any break who thereafter completed more than 240 days. Petitioner no.2 has specifically alleged to have been given fictional breaks. The petitioner no.3 had been engaged by the respondent no.1 at Lador Sericulture Centre under the Division Naduan & was transferred to Bhareri where his services had been interrupted. It is alleged that from 1995 to 2003 while working at Ladha Centre and Bhareri services of petitioner no.2 had been engaged and disengaged who is also stated to have been given fictional breaks from 1996 to 2003 and was not allowed to complete 240 days so as to meet requirement of the provisions of Section 25-B of the Act. Similarly, petitioner no.4 was given fictional break in the year 1990 when his services were engaged and disengaged by the respondent without prior notice. The grievances of petitioners remain that they have been engaged and disengaged by respondent from time to time giving fictional breaks and not letting each of them completing 240 days in a calendar year so that they did not get benefit of regularization as per the policy framed by the government from time to time. It is also claimed that when the services of petitioners had been disengaged from time to time works and funds were available in department whereas persons junior to them were retained in respondent department namely Kishori Lal who joined on 1.6.2008, Joginder Singh on 6.3.1995, Dile Ram on 27.6.1994, Joginder Pal joined on 6.3.1995, Surjeet Singh on 6.7.1997, Sarwan Kumar on 5.3.1998 and Ravi Dutt on 1.11.1999. It is alleged that all the above named persons were junior to petitioners who were not given fictional breaks as were given to petitioners and thus these persons as alleged in para no.2 of the claim petition had been regularized. It also remains the case of the petitioners that except Baldev Raj petitioner no.2, remaining petitioners have been working under the respondents on daily wage basis and that Baldev Raj had since retired on 31.3.2010. The petitioner nos. 1, 2 and 4 are alleged to have approached the Hon’ble Administrative Tribunal, Shimla making prayer for not giving fictional breaks by respondents as well as their regularization

per policy of government and O.A. no.1300/1996 titled as Pawan Dev & Ors. vs. State of H.P. & Ors., which was later on transferred to Hon'ble High Court of H.P. and was registered as CWP (T) no.85/2009. Vide order dated 26.11.2009 in CWP no. 85/2009 it was observed that petition was allowed and respondent was directed to consider the case of the petitioners for regularization by taking into consideration their continuous service for 8/10 years. As against the order of Hon'ble High Court dated 26.11.2009, petitioners had challenged the same by filing LPA no. 26/2010 which was disposed off on 3.9.2012. It is alleged that on the basis of judgment by the Hon'ble High Court in LPA no. 26/2010 dated 9.3.2012 that all the petitioners represented in 2012 but their demands have not been accepted by respondents and thus petitioners have raised industrial dispute vide demand notice dated 6.7.2012 and during conciliation proceedings, the demands of petitioners were also not accepted and thereafter Conciliation Officer Bilaspur had sent failure report under Section 12(4) of the Industrial Disputes Act to the Labour Commissioner i.e. appropriate government to make the reference and thereafter government had made the reference which was referred to this court for adjudication vide office order dated 3.12.2013. It is specifically claimed the services of all petitioners had been individually engaged and disengaged by the respondents from time to time against the mandatory provisions of the Industrial Disputes Act only to deprive them from permanent status as required under Section 25-B of the Industrial Disputes Act for the purpose of regularization as per policy framed by state government from time to time to its daily waged workers and breaks period of the petitioners as been prayed to be condoned and counted in their continuous of service from their initial engagement. Thus, the act of respondents in giving fictional breaks to the petitioners and allowing junior persons to complete 240 days was manifestly done with the object to deprive petitioners of their legitimate right for being regularized subsequently as per government policy. Consequently, petitioners have jointly prayed that this court may determine the facts and circumstances of disputes and set aside the break period of all the petitioners from their initial engagement besides prayer has been also made stating therein directing to respondents to give regular work charge status to all petitioners as per policy of government after completion of 8/10 years continuous service in the regular pay scale besides prayer has also been made to fix the petitioners in regular/work charge seniority list above to their junior as stated above besides litigation costs.

4. The respondent nos. 1 and 2 resisted the claim petition jointly filed reply to the statement of claim filed by the petitioners, inter-alia taken preliminary objection of maintainability. On merits stated that petitioner no.1, 2 and 4 were engaged by respondent as casual labourers w.e.f. December, 1989, January, 1991 and November, 1998 respectively. It has been denied petitioner no.3 was engaged on 17.2.1989 and that petitioner no.3 was engaged as casual labourer in December, 1991 as can be ascertained from mandays chart. It is claimed that work of Sericulture Wing of Industries department remainis seasonal in nature which depends upon the availability of funds and work. The petitioner no.2 is stated to have retired after attaining the age of superannuation on 31.3.2010 and other remaining workers still in service. It has also come in the evidence that Shri Prem Singh petitioner no.4 had also retired on 31.7.2014 during pendency of present claim petition. It is claimed that petitioners themselves absented from work who did not complete 240 days in each calendar year till the year 2000. It is also contended that as per regularization policy of H.P. government, the services of all the workers had been regularized as and when the vacancy was available in the Sericulture Wing of industries department in their seniority but the present matter is stated to be under consideration as is clear from the seniority list. It is admitted that persons junior to petitioners have been regularized since they had completed 240 days whereas the petitioners had till that period did not complete the criteria laid down by the government for regularization. It is also stated that as per the order of Hon'ble High Court in CWP No.26/2010 an opportunity of personal hearing on 16.6.2012 was given by respondent no.2 and thereafter vacancy of petitioners would be regular by virtue of seniority list of the daily waged workers against the vacancies as and when available in the department. Accordingly, denying

allegation of time to time termination of the services of petitioners and violation of mandatory provisions of the industrial disputes, petition was sought to be dismissed.

5. The petitioners jointly filed rejoinder, reiterated their stand as maintained in the claim petition and contentions raised by the respondents had been denied by petitioners.

6. To prove case, petitioner no.1 had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of seniority list (as on 31.3.2009), Ex. PW1/C copy of O.A. No. 1300/1996, Ex. PW1/D copy of CWP (T) no. 85/2009, Ex. PW1/E LPA No. 26/2010, Ex. PW1/F representation dated 2.4.2012, Ex. PW1/G demand notice, Ex. PW1/H copy of office order, Ex. PW1/I letter dated 1.3.2012, Ex. PW1/J office order dated 18.2.2010, Ex. PW1/K copy of office order, Ex. PW1/L office order dated 20.12.2008 and Ex. PW1/M copy of letter dated 18.6.2012. To prove case, petitioner no.2 had examined himself as PW2 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW2/B seniority list (as on 31.3.2009), Ex. PW2/C copy of O.A. No. 1300/1996, Ex. PW2/D copy of CWP (T) No. 85/2009, Ex. PW2/E copy of LPA No. 26/2010, Ex. PW2/F representation dated 2.4.2012, Ex. PW2/G copy of demand notice dated 6.7.2012, Ex. PW2/H copy of office order, Ex. PW2/I letter dated 1.3.2012, Ex. PW2/J office order dated 18.2.2010, Ex. PW2/K office order dated 15.5.2008, Ex. PW2/L office order dated 20.12.2008 and Ex. PW2/M letter dated 18.6.2012. To prove case, petitioner no.3 had examined himself as PW3 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW3/B seniority list (as on 31.3.2009), Ex. PW3/C demand notice dated 6.7.2012, Exts. PW3/D and E are the copies of certificates, Ex. PW3/F mandays chart of petitioner no.3, Ex. PW3/G letter dated 1.3.2012, Ex. PW3/H office order dated 18.2.2010, Ex. PW3/I office order dated 15.5.2010, Ex. PW3/J office order dated 20.12.2008 and Ex. PW3/K letter dated 18.6.2012. To prove case, petitioner no.4 had examined himself as PW4 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW4/B seniority list, Ex. PW4/C copy of O.A. No.1300/2009, Ex. PW4/D copy of CWP (T) 85/2009, Ex. PW4/E copy of LPA no.26/2010, Ex. PW4/F copy of representation, Ex. PW4/G copy of office order, Ex. PW4/H copy of demand notice, Ex. PW4/I copy of letter dated 1.3.2012, Ex. PW4/J copy of office order, Ex. PW4/K copy of office order dated 15.5.2010, Ex. PW4/L copy of office order dated 20.12.2008 and Ex. PW4/M copy of letter dated 18.6.2012 and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioners, respondents had examined Shri Baldev Chauhan (respondent no.2), the Silk Seed Production Officer, Ghumarwin who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B1 to B2 the copies of mandays chart of petitioner no.1, Ex. RW1/B3 to B4 the copies of mandays chart of petitioner no.2, Ex. RW1/B5 to B6 the copies of mandays chart of petitioner no.3, Ex. RW1/B7 to B8 the copies of mandays chart of petitioner no.4, Ex. RW1/B9 the copy of seniority list (as it stood on 31.3.2013) and closed evidence.

8. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

9. From the contentions raised, following issues were framed on by my ld. predecessor on 18.6.2014 for determination:

1. Whether time to time termination of the services of the petitioner (1) Sh. Rajender Paul s/o Sh. Jeet Ram during the year 1996 1998 and 2000 (2) Sh. Baldev Raj s/o Sh. Salho Ram during the year 1996, 1998 and 2000, (3) Sh. Ramesh Kumar s/o Sh. Nika Ram during the year 1996, 2000 and 2003 and (4) Sh. Prem Singh s/o Sh. Sunder Singh during the year 1996 and 2000 by the respondents is illegal and unjustified as alleged?

....OPP

2. If issue No.1 is proved in affirmative, whether the petitioners are entitled to monetary benefits, compensation, seniority etc.? ... OPP
3. Whether the claim petition is not maintainable in the present form? OPR
4. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed off simultaneously without repetition of evidence.

12. Stepping into the witness box as PW1 to PW4 respectively, petitioners have sworn in their affidavits Exts PW1/A, PW2/A, PW3/A and PW4/A under Order 18 Rule 4 CPC respectively stipulating therein the manner in which they were engaged and continued to work uninterruptedly with the respondents besides they have specifically deposed on oath that in the years 1996, 1998 & 2000 petitioner no.1, in the years 1996, 1998 & 2000 petitioner no.2, in the years 1996, 2000 & 2003 petitioner no.3 and in the years 1996 & 2000 petitioner no.4 respectively their services had been engaged and disengaged by the respondents by giving fictional breaks. It has been stated that the fictional breaks had been given by respondents with the object that petitioners did not complete 240 days of work for the purpose of continuous service envisaged under Section 25-B of the Act. Be it stated that petitioners have also maintained on oath that their co-workers namely Ramesh Kumar and Pawan Dev & others were not given fictional breaks and they had completed 240 days in each year and their services have been regularized. The petitioners have also deposed about the process of conciliation before the Labour Officer which failed consequent upon which reference was made by the appropriate government before this court for adjudication.

13. Exts. RW1/B1 and Ex. RW1/B2 are the mandays chart of petitioner no.1 reflecting that he had been initially appointed in the year 1989 and was still working when the claim petition was filed. The contents of said document revealed working mandays showing that petitioner no.1 to have worked for 354 days in the year 2013, 350 days in 2012, 346 days in 2011, 359 days in the year 2010, 365 days in 2009, 366 days in 2008, 302 days in 2007, 365 days in 2006, 365 days in 2005, 343 days in 2004, 344 days in 2003, 323 days in 2002, 319 days in 2001, 205 days in 2000, 271 days in 1999, 216 days in 1998, 259 days in 1997 and 210 days in 1996. Exts. RW1/B3 and B4 are the mandays chart of petitioner no.2 reflecting that he had been initially appointed in the year 1991 and **retired in the year 2010**. The contents of said document revealed working mandays showing that petitioner to have worked for 90 days in the year 2010, 365 days in 2009, 366 days in 2008, 302 days in 2007, 365 days in 2006, 365 days in 2005, 343 days in 2004, 344 days in 2003,

312 days in 2002, 311 days in 2001, 205 days in 2000, 272 days in 1999, 224 days in 1998, 278 days in 1997 and 217 days in 1996. Exts. RW1/B5 and B6 is the mandays chart of petitioner no.3 reflecting that he had been initially appointed in the year 1991. The contents of said document revealed working mandays showing that petitioner to have worked for 359 days in the year 2013, 358 days in 2012, 363 days in 2011, 365 days in the year 2010, 365 days in 2009, 366 days in 2008, 314 days in 2007, 365 days in 2006, 365 days in 2005, 343 days in 2004, 239 days in 2003, 322 days in 2002, 340 days in 2001, 228 days in 2000, 288 days in 1999, 247 days in 1998, 293 days in 1997 and 223 days in 1996. Exts. RW1/B7 and B8 are the mandays chart of petitioner no.4 reflecting that he had been initially appointed in the month of November, 1988 and was still working when the claim petition was filed but had retired from service during pendency of claim petition. The contents of said document revealed working mandays showing that petitioner to have worked for 363 days in the year 2013, 362 days in 2012, 363 days in 2011, 365 days in the year 2010, 365 days in 2009, 366 days in 2008, 304 days in 2007, 365 days in 2006, 365 days in 2005, 343 days in 2004, 345 days in 2003, 333 days in 2002, 346 days in 2001, 227 days in 2000, 285 days in 1999, 247 days in 1998, 292 days in 1997 and 233 days in 1996.

14. Ex. PW1/B is the seniority list of daily waged workers of industries department as it stood on 31.12.2009 which corresponds to Exts. PW2/B, PW3/B and PW4/B showing the name of petitioners which figured at serial nos. 26, 27, 28 and 29 respectively who are shown to have joined on 13.6.1994, 11.6.1994, 9.6.1994 and 9.6.1994 respectively. Cross-examination of petitioners No.1 and 3 as PW1 and PW3 revealed that they were still employed with the respondent. They have although admitted that department/respondent had regularized the services of only those workers who had completed 240 days or more but the case of petitioners primarily remains that they had been given fictional breaks and that persons who were junior to them were retained since they were not issued muster roll for whole years i.e. for 1996, 1998 & 2000, 1996, 1998 & 2000, 1996, 2000 & 2003 and 1996 & 2000 respectively. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioners did not complete 240 days in a given year.

15. It is the admitted case of the parties that services of petitioners were engaged as daily wager by respondent in the years 1989, 1991, 1991 and 1988 respectively finds support from mandays chart Ex. RW1/B1, Ex. RW1/B3, Ex. RW1/B5 and Ex. RW1/B7 respectively on record. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioners were engaged for undertaking seasonal works only. Otherwise also, when petitioners had served respondent for more than 240 days in several calendar years as per mandays chart on record, it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondents manifestly establishes that the same has been made to escape liability qua claim of petitioners. It is nowhere in evidence of respondent that forestry work or activities relating thereto i.e. sericulture has been declared or notified as "seasonal work" as required under the law.

16. It has also come in the evidence that muster roll had not been issued to petitioners for whole month in a year for reasons best known to respondents. Even in some months, muster rolls were not at all issued i.e. in 1996, 1998, 2000 and 2003. No muster roll was issued as petitioners are shown to have not been given or assigned any work however it is evident from the mandays charts that petitioner were engaged and disengaged whimsically in arbitrary manner without cogent reason and that no letter or notice whatsoever had been issued qua non attendance of any of petitioners and as such the case of petitioners having been given fictional breaks cannot be disbelieved. In so far as plea of 'abandonment' of service by petitioners as contended by respondents in their reply is concerned, suffice would be stated to have that merely because workman does not attend his duty could not mean that he has abandoned job. It is settled law that plea of abandonment has to be proved like fact. In the case in hand, there is no iota of evidence on

record to show that on their absence, respondents had issued any notice or initiated departmental proceedings as absence from duty is itself a serious misconduct. In absence of any corresponding evidence led by respondent that if any proceedings had been initiated against petitioners on their absence from duty, it would be unsafe to hold that petitioners had abandoned the job. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service was given by respondents from 1996, 1998 & 2000 to petitioner no.1, 1996, 1998 & 2000 to petitioner no.2 in 1996, 2000 & 2003 to petitioner no.3 and 1996 & 2000 to petitioner no.4 respectively which is an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of "continuous service" envisaged under Section 25-B of the Act.

17. Another aspect of the case which can not be lost sight while appreciating evidence is that junior workmen were allowed to work and petitioners who were senior had been disengaged. Examination of RW1 the then Baldev Chauhan, Silk Seed Production Officer on oath revealed that the workers mentioned in para no.2 of his affidavit Ex. RW1/A was junior to petitioners. As per seniority list Ex. PW1/B all the petitioners were engaged in service on 13.6.1994, 11.6.1993, 9.6.1994 and 9.6.1994 respectively. In the seniority list Ex. RW1/B9, the persons junior to the petitioners figured at serial nos. 4 and 5 to 10 namely Suresh Kumar, Diles Ram, Joginder Pal, Uttam Singh, Surjeet Singh, Sarwan Kumar and Ravi Dutt were appointed on 21.6.1994 and 27.6.1994, 6.3.1995, 4.12.1996, 6.7.1997, 5.3.1998 and 14.3.1998 respectively had completed 240 days and were eligible for regularization. The plea of petitioners that principle of 'Last come First go' envisaged under Section 25-G of the Act has not been followed by respondent. Ex. RW1/B9 is the seniority list which showed that from serial nos. 4 to 10 the workers namely Suresh Kumar and Dile Ram & others were junior to the petitioners and were employed in service after from the petitioners. Ld. AR/counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has been held by Hon'ble Apex Court in judgment **Central Bank of India vs. S. Satyam**, reported in **1996 (5) SCC 419**. That being so, the relief sought for by petitioner is liable to be given in view of violation of the provisions of Section 25-G of the Act as well. Thus, petitioners/claimants have succeeded in establishing that fictional breaks had been given to them illegally by respondents due to which they could not complete 240 days in any calendar years as stated above. It is accordingly held that respondent had given fictional breaks time to time to the petitioners which is illegal and unjustified falling within the ambit of unfair labour practice. Since the petitioner no.2 and petitioner no.4 have retired on 31.3.2010, 31.07.2014 respectively during pendency of present case and their cross-examination that they were employed with the respondent so they could not be awarded back wages in absence of evidence being not gainfully employed although they are entitled to continuity in service from the date of initial engagement as well as seniority **except back wages**. Issues in question is decided accordingly.

ISSUE NO.3

18. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in several years or discussed in foregoing paras, it cannot not be stated that the petitioners cannot claim that the period of fictional break be counted their services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioners are the workmen working with the respondents who had been given fictional breaks with the object that they did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioners and against respondent.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioners are held to be in continuous uninterrupted service with the respondents from the date of their initial engagement and that the breaks given by the respondents being fictional in nature shall have no effect on the seniority and continuity of service of the petitioners and their seniority shall be reckoned from their initial date of engagement. Accordingly, claim of petitioners is hereby allowed in part and reference is accordingly answered in favour of petitioners who shall thus be deemed to be in continuous service of respondents with all consequential benefits **except back wages**. However, they shall be considered for regularization by respondents at the time when their juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 217/2013

Date of Institution : 09.12.2013

Date of decision : 22.07.2015

Shri Kamer Chand s/o Shri Parshotam Chand, r/o Village Ganguhi, P.O. Dhupkiara, Tehsil Jaisinghpur, Distt. Kangra, H.P. *...Petitioner*

Versus

The Divisional Forest Officer, Palampur, District Kangra, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. N.L. Kaundal, AR

Sh. Vijay Kaundal, Adv.

For the Respondent :

Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether retrenchment of the services of Sh. Kamer Chand S/o Sh. Parshotam Chand R/O Village Ganguhi, P.O. Dupkiara, Tehsil Jaisinghpur, Distt. Kangra, H.P. by The Divisional Forest Officer, Palampur, Distt. Kangra, H.P. w.e.f. 31.3.2006 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 08.8.1998 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the “Act”). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched alongwith petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169

daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 7152/2013 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. Respondent resisted the claim petition, filed separate reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of

funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D regarding representation of daily wagers of IGCP Palampur, Ex. PW1/E copy of letter dated 17.11.2008 regarding reengagement of daily waged workers in to IGCP Palampur, Ex. PW1/F letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wager workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/H letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K information supplied under RTI Act, Ex. PW1/L certificate concerning Shyam Lal, Ex. PW1/M another certificate concerning Shyam Lal and letter dated 15.2.2006 as Ex. PW1/N notice qua retrenchment of Sushil Kumar on closure of the IGCP Palampur, Ex. PW1/O letter dated 30th July, 2013 from Principal Secretary (Forests) to the Govt. of H.P., Ex. PW1/P copy of mandays chart, Ex. PW1/Q letter dated 20.2.2009 claiming willingness of the petitioner, Ex. PW1/R letter dated 21.1.2010 of DFO Palampur to petitioner for reengagement of daily waged workers of IGCP Palampur and IWDP (Hills) Kandi Area and Ex. P-1 information regarding filling up of vacant posts of various categories with the government departments and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C registration certificate of H.P. Echo- Development Society, Palampur, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed on 17.1.2015 for determination.

1. Whether the retrenchment of the services of the petitioner by the respondent w.e.f. 31.3.2006 is/was improper and unjustified? OPP
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? OPP
3. Whether the present claim petition is not maintainable in the present form? OPR

4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? OPR
5. Whether the claim petition is bad for non joinder of the necessary parties as alleged? OPR
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to

regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Kamer Chand figures at serial no.66 who is shown to have been appointed in the year 1996 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1996 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll in the year 1996 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/N was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and

case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner alongwith other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/J stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.1.2009 Ex. PW1/H was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/R in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/Q dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through it officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held

and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with crossexamination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court that the petitioner in his crossexamination has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in

an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO. 3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO. 4

20. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 16/2014

Date of Institution : 09.1.2014

Date of decision : 27.07.2015

Shri Deep Kumar s/o Shri Dhyan Chand, r/o Village Bhalerath, P.O. Golwan, Tehsil Lad Bharol, District Mandi, H.P. *...Petitioner*

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P. *....Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Deep Kumar, S/O Shri Dhyan Chand, R/O Village Bhalerath, P.O. Golwan, Tehsil Lad Bharol, District Mandi, H.P.

during 1999 to 2010 by the Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent on muster roll as daily waged forest worker w.e.f. January, 1997 without any written appointment order/letter who continued to work uninterruptedly under the supervision of Range Officer, Lad Bharol upto 2010. The grievance of petitioner remains that the services of petitioner with the department from 1997 to 2010 has been engaged and disengaged by Range Officer, Lad Bharol as per the direction of the respondent giving fictional breaks from time to time and that while giving fictional breaks, no written order was ever given and that such practice of giving fictional breaks continued till the date of filing of claim petition. It is alleged that fictional breaks had been given to petitioner by respondent with the object that petitioner did not complete 240 days so as to claim benefit of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and due to fictional breaks from 1997 till 2010, petitioner had not completed 240 days in any calendar year. Not only this, while giving fictional breaks in the years aforesaid, respondent had not followed the principle of 'Last come First go' as the persons junior to him had been retained in service. The name of juniors are Shri Manoj Kumar s/o Shri Bhupender Singh who joined in 21.11.1997, Shri Ramesh Chand s/o Sh. Purvia Ram who joined on 1.1.1999, Smt. Sarpa Devi w/o Sh. Roshan Lal who joined on 1.1.1999, Jagdish Chand s/o Sh. Kishori Lal who joined on 1.8.2000, Smt. Nirmla Devi w/o Sh. Roop Lal who joined on 1.3.2000, Sh. Love Kumar s/o Sh. Beli Ram who joined on 1.2.1998 and Sh. Shyam Singh s/o Shri Narain Singh who joined 7.10.2008 have been retained in service by the respondent. Thus, retaining junior persons and giving fictional breaks to petitioner/claimant terminating his services could not be construed that work and funds were not available with the department when the services of petitioner had been terminated from time to time giving fictional breaks. In conciliation proceedings before the Labour Officer, respondent had taken the plea that the services of petitioner had been engaged as per availability of works and funds. It is also alleged that giving of fictional breaks to petitioner from 1997 to 2010 is illegal and in violation of the mandatory provisions of the Act which constituted unfair labour practice within the meaning of Vth Schedule Clause 10 of the Act. Accordingly, petitioner seeks relief to the extent that fictional breaks illegally given to him be treated and counted as period of continuity in service for the purposes of his regularization and respondent be directed to grant work charge status after completion of eight years i.e. w.e.f. July, 2010 besides cost of litigation and to any other relief to which petitioner is found entitled.

4. Respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability and claim petition being bad on account of delay and laches. On merits, admitted that petitioner was initially engaged in forest department in January, 1997 as casual labourer as alleged for seasonal forestry works keeping in view the availability of funds and work as reflected in mandays chart. It is claimed that petitioner is still continuing to work intermittently with the department except the year 2003. Asserted that the forest work was seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although he had not completed 240 days of work so far in any calendar year. It is emphatically denied that any fictional break was given to petitioner with the object that he could not get the benefit of the provisions of Section 25-

B of the Act. Similarly, violation of principle of 'Last come First go' has been alleged as against respondent when filed reply in which maintained that no persons junior to petitioner has been engaged continuously. It is further alleged that Smt. Nirmla Devi w/o Shri Roop Lal was engaged after policy of compassionate appointments in Dharampur range as per approval of the competent authority and also in view of order of Hon'ble SAT, HP. Similarly, Shyam Singh s/o Sh. Narain Singh was engaged as contingent paid worker on compassionate grounds after death of his father in pursuance to office order no.6664 dated 27.9.2008 of Conservator Forests Mandi. Relying upon seniority list of casual labourers, it is contended that work was provided to petitioner as and when it was available with the department. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works the same did not constitute unfair labour practice rather petitioner engaged himself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B letter dated 4.2.1986 regarding maintenance of casual registers/Casual cards of daily rated workmen, Ex. PW1/C copy of seniority list of daily wagers of Joginder Nagar and Exts. Px and Py are the notices and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent examined himself as RW1 Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, Ex. RW1/C the letter dated 4th May, 1995, Ex. RW1/D the copy of order of the Hon'ble Administrative Tribunal, Ex. RW1/E copy of letter dated 27.9.2008, Ex. RW1/F the copy of Award passed by this Court in Reference no. 278/2001 (RBT no.311/2004) dated 13.1.2005, Ex. RW1/G the Divisional Level Seniority list of casual labour daily wagers of Joginder Nagar Forest Division (as it stood on 31.12.2012), Ex. RW1/H is notice dated 31.12.2009 and Ex. RW1/I the copy of notice dated 30.12.2010 and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 27.3.2015 and finally recasted on 27.7.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during 1999 to 2010 is illegal and unjustified as alleged. If so, its effect? OPP
2. Whether the claim petition is not maintainable in the present form? OPP
3. Whether the petition is bad on account of delay and laches as alleged. If so, its effect? OPR
4. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. At the outset, it is apt to mention here that petitioner is no more in service with respondent as admitted by him in cross-examination. Stepping into the witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which he was engaged and continued to work uninterruptedly under the supervision of Range Officer, Lad Bharol upto 2010. He has specifically deposed on oath that from the year 1997 to 2010, his services had been engaged and disengaged by Range Officer, Lad Bharol for giving fictional breaks to petitioner. It is also stated that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks from 1997 till 2010, petitioner could not complete 240 days. Petitioner has also maintained on oath that his co-workers namely Manoj Kumar who joined in 21.11.1997, Ramesh Chand who joined on 1.1.1999, Smt. Sarpa Devi who joined on 1.1.1999, Jagdish Chand who joined on 1.8.2000, Smt. Nirmla Devi who joined on 1.3.2000, Sh. Love Kumar who joined on 1.2.1998 and Sh. Shyam Singh who joined 7.10.2008 were not given fictional breaks who had completed 240 days in each year of their respective services which have been regularized. The petitioner has also deposed about the process of conciliation before the Labour Officer which failed consequent upon which reference was made by the appropriate government before this court for adjudication.

11. Ex. RW1/B is the mandays chart of petitioner reflects that he had been appointed in the month of January, 1997 and abstract of working mandays showing that petitioner to have worked for 28 days in the year 2010, 118 days in 2009, 100 days in 2008, 175 days in 2007, 233 days in 2006, 180 days in 2005, 171.50 days in 2004, 245 days in 2003, 200 days in 2002, 192 days in 2001, 148 days in 2000, 236 days in 1999, 28 days in 1998 and 63 days in 1997. Ex. RW1/G is the seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31.12.2012 which shows the name of petitioner which figured at serial no.11 who is shown to have joined on 01.04.1997. Cross-examination of petitioner as PW1 reveals that he was still employed with the respondent. He has although admitted that department/respondent had regularized the services of only those workers who had completed 240 days or more but the case of petitioner primarily reveals that he had been given fictional breaks and that persons who were junior to him were retained and he was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year.

12. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of January, 1997. This facts find supports from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 28 days in the year 2010, 118 days in 2009, 100 days in 2008, 175 days in 2007, 233 days in 2006, 180 days in 2005, 171.50 days in 2004, 245 days in 2003, 200 days in 2002, 192 days in 2001, 148 days in 2000, 236 days in 1999, 28 days in 1998 and 63 days in 1997 and therefore when petitioner had served respondent for more than 200 days in several calendar years as per mandays chart it could

not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly established that the same has been made to escape liability qua claim of petitioner. It is nowhere in evidence of respondent that forest department has been declared or notified as seasonal worker as required under the law.

13. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before any taking action against workman. Again there is no iota of evidence showing that the respondent had initiated any action in the absence of petitioner from duty. It is evident from record that no explanation of petitioner was called even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when he absented as per the mandays referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

14. It has also come in the evidence that muster roll had not been issued for whole month in a year. No muster roll was issued as petitioner is showing to have not given any work however it is evident from the mandays chart Ex. RW1/B that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason and that no letter or notice whatsoever had been issued qua any non attendance and as such the case of petitioner given fictional breaks cannot be disbelieved. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 1999 to 2010 which is an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of "continuous service" envisaged under Section 25-B of the Act.

15. Another aspect of the case which can not be lost sight while appreciating evidence is that junior workmen were allowed to work and petitioner was disengaged. Examination of RW1 the then Divisional Forest Officer on oath revealed that one Shyam Singh was junior to respondent. Similarly, Love Kumar had joined in service on 1.2.1998 and his services had been regularized from the date of 1st appointment i.e. 1.2.1998 with all consequential benefits of his services except payment of back wages as Shyam Singh is admittedly junior to the petitioner as per contents of Ex. PW1/C which is the seniority list of daily wagers of Joginder Nagar showed that Shyam Singh was appointed in the year 2008. The plea of petitioner remains that principle of 'Last come First go' envisaged under Section 25-G of the Act has not been followed by respondent. Ld. AR/counsel for the petitioner has contended that applicability of Section 25-G of the Act it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year. That being so, the relief sought for by petitioner is liable to be given in view of violation of the provisions of Section 25-G of the Act. Thus, petitioner/claimant has succeed in establishing that fictional breaks had been given to him illegally by respondent due to which he could not complete 240 days in any calendar year more so when respondent had failed to prove allegation of abandonment. It is accordingly held that respondent had given fictional breaks time to time to the petitioner which is illegal and unjustified as has been come in the evidence. Since the petitioner himself has admitted in cross-examination that he was employed with the respondent so he could not be awarded back wages although he is entitled to continuity in service from the date of initial engagement as well as seniority **except back wages**. Issue in question is decided accordingly.

ISSUE NO. 2

16. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted for computation of entire services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO. 3

17. Ld. Dy. D.A. for State contended that there is inordinate delay on the part of petitioner when filed the claim petition or raised industrial dispute due to which he is not entitled any relief. It may not be erroneous to mention here that petitioner has been continuously working with the respondent and the fictional breaks were given to him of and on by the respondent through its subordinate official for which he raised industrial dispute. The fictional breaks are stated to have been given from 1999 to 2010. Be it noticed that in cross-examination of petitioner by respondent no question on delay has been asked. Even from facts in evidence no inference of delay and laches can be drawn. Accordingly, it is held that claim petition is not bad on account of delay and laches which is also supported by the judgment of **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**. Accordingly, issue in hand is answered in negative in favour of petitioner and against respondent.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 85/2014

Date of Institution : 24.2.2014

Date of decision : 27.07.2015

Smt. Guddi Devi w/o Shri Roop Lal, r/o Village Mayoh, P.O. Dharampur, Tehsil Sarkaghat,
District Mandi, H.P. *...Petitioner*

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District
Mandi, H.P. *....Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Guddi Devi, W/O Shri Roop Lal, R/O Village Mayoh, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. during 2006 to 2009 by the Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent on muster roll as daily waged forest worker w.e.f. January, 1996 without any written appointment order/letter who continued to work uninterruptedly under the supervision of Range Officer, Dharampur upto 2009. The grievance of petitioner remains that the services of petitioner with the department from 1996 to 2009 has been engaged and disengaged by Range Officer, Lad Bharol as per the direction of the respondent giving fictional breaks from time to time and that while giving fictional breaks, no written order was ever given and that such practice of giving fictional breaks continued till the date of filing of claim petition. It is alleged that fictional breaks had been given to petitioner by respondent with the object that petitioner did not complete 240 days so as to claim benefit of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’) and due to fictional breaks from 1996 till 2010, petitioner had not completed 240 days in any calendar year. Not only this, while giving fictional breaks in the years aforesaid, respondent had not followed the principle of ‘Last come First go’ as the persons junior to her had been retained in service. The name of juniors are Shri Manoj Kumar s/o Shri Bhupender Singh who joined in 21.11.1997, Shri Ramesh Chand s/o Sh.

Purvia Ram who joined on 1.1.1999, Smt. Sarpa Devi w/o Sh. Roshan Lal who joined on 1.1.1999, Jagdish Chand s/o Sh. Kishori Lal who joined on 1.8.2000, Smt. Nirmla Devi w/o Sh. Roop Lal who joined on 1.3.2000, Sh. Love Kumar s/o Sh. Beli Ram who joined on 1.2.1998 and Sh. Shyam Singh s/o Shri Narain Singh who joined 7.10.2008 have been retained in service by the respondent. Thus, retaining junior persons and giving fictional breaks to petitioner/claimant terminating her services could not be construed that work and funds were not available with the department when the services of petitioner had been terminated from time to time giving fictional breaks. In conciliation proceedings before the Labour Officer, respondent had taken the plea that the services of petitioner had been engaged as per availability of works and funds. It is also alleged that giving of fictional breaks to petitioner from 1996 to 2009 is illegal and in violation of the mandatory provisions of the Act which constituted unfair labour practice within the meaning of Vth Schedule Clause 10 of the Act. Accordingly, petitioner seeks relief to the extent that fictional breaks illegally given to her be treated and counted as period of continuity in service for the purposes of her regularization and respondent be directed to grant work charge status after completion of eight years besides cost of litigation and to any other relief to which petitioner is found entitled.

4. Respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches and the claim petition has become infructuous. On merits, admitted that petitioner was initially engaged in forest department in January, 1996 as casual labourer as alleged for seasonal forestry works keeping in view the availability of funds and work as reflected in mandays chart. It is claimed that petitioner is still continuing to work intermittently with the department upto the year 2000 and thereafter she left the work of her own during the period from July, 2000 to 2006. Thereafter petitioner reengaged per availability of work and funds and she worked again intermittently upto March, 2009 and thereafter she abandoned the job w.e.f. 29.3.2009. It is further asserted that vide notice/letter no. 456(B)/Dh. Dated 6.1.2011, petitioner was directed by the respondent to report for duty but she did not pay any heed. Asserted that the forest work was seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although she had not completed 240 days of work so far in any calendar year. It is emphatically denied that any fictional break was given to petitioner with the object that she could not get the benefit of the provisions of Section 25-B of the Act. Similarly, violation of principle of 'Last come First go' has been alleged as against respondent when filed reply in which maintained that no persons junior to petitioner has been engaged continuously. It is further alleged that Smt. Nirmla Devi w/o Shri Roop Lal was engaged after policy of compassionate appointments in Dharampur range as per approval of the competent authority and also in view of order of Hon'ble SAT, HP. Similarly, Shyam Singh s/o Sh. Narain Singh was engaged as contingent paid worker on compassionate grounds after death of her father in pursuance to office order no.6664 dated 27.9.2008 of Conservator Forests Mandi. Relying upon seniority list of casual labourers, it is contended that work was provided to petitioner as and when it was available with the department. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works the same did not constitute unfair labour practice rather petitioner engaged herself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC, Ex. PW1/B letter dated 4.2.1986 regarding maintenance of

casual registers/Casual cards of daily rated workmen, Ex. PW1/C copy of seniority list of daily wagers of Joginder Nagar, Ex. PW1/D copy of letter dated 11.9.2008, Ex. PW1/E letter dated 7.1.2010 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent examined himself as RW1 Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar tendered/proved her affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, Ex. RW1/C the letter dated 4th May, 1995, Ex. RW1/D the copy of order of the Hon'ble Administrative Tribunal, Ex. RW1/E copy of letter dated 27.9.2008, Ex. RW1/F the copy of Award passed by this Court in Reference no. 278/2001 (RBT no.311/2004) dated 13.1.2005, Ex. RW1/G the Divisional Level Seniority list of casual labour daily wagers of Joginder Nagar Forest Division (as it stood on 31.12.2012), Ex. RW1/H is letter dated 18.1.2011, Ex. RW1/I the copy of application regarding forest work and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 27.3.2015 and finally recasted on 27.7.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during 2006 to 2009 is illegal and unjustified as alleged. If so, its effect? OPP
2. Whether the claim petition is not maintainable in the present form? OPP
3. Whether the petition is bad on account of delay and laches as alleged. If so, its effect? OPR
4. Whether the claim petition has become infructuous as alleged. If so, its effect? OPR
5. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. At the outset, it is apt to mention here that petitioner is no more in service with respondent as admitted by her in cross-examination. Stepping into the witness box as PW1, petitioner has sworn in her affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the

manner in which she was engaged and continued to work uninterruptedly under the supervision of Range Office, Dharampur upto 2009. She has specifically deposed on oath that from the year 1996 to 2009, her services had been engaged and disengaged by Range Officer, Dharampur for giving fictional breaks to petitioner. It is also stated that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks from 1996 till 2009, petitioner could not complete 240 days. Petitioner has also maintained on oath that her co-workers namely Manoj Kumar who joined in 21.11.1997, Ramesh Chand who joined on 1.1.1999, Smt. Sarpa Devi who joined on 1.1.1999, Jagdish Chand who joined on 1.8.2000, Smt. Nirmla Devi who joined on 1.3.2000, Sh. Love Kumar who joined on 1.2.1998 and Sh. Shyam Singh who joined 7.10.2008 were not given fictional breaks who had completed 240 days in each year of their respective services which have been regularized. The petitioner has also deposed about the process of conciliation before the Labour Officer which failed consequent upon which reference was made by the appropriate government before this court for adjudication.

11. Ex. RW1/B is the mandays chart of petitioner reflecting that she had been appointed in the month of January, 1996 and abstract of working mandays showing that petitioner to have worked for 29 days in the year 2009, 29 days in 2008, 40 days in 2007, 122 days in 2006, 129 days in 2005, 100 days in 2000, 204 days in 1999, 162 days in 1998, 86 days in 1997 and 84 days in 1996. Ex. RW1/G is the seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31.12.2012 but the name of petitioner was not mentioned in this list. Cross-examination of petitioner as PW1 reveals that she was still employed with the respondent. She has although admitted that department/respondent had regularized the services of only those workers who had completed 240 days or more but the case of petitioner primarily reveals that she had been given fictional breaks and that persons who were junior to her were retained and she was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year.

12. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of January, 1997. This facts find supports from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 29 days in the year 2009, 29 days in 2008, 40 days in 2007, 122 days in 2006, 129 days in 2005, 100 days in 2000, 204 days in 1999, 162 days in 1998, 86 days in 1997 and 84 days in 1996 and therefore when petitioner had served respondent for more than 200 days in several calendar years as per mandays chart it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly established that the same has been made to escape liability qua claim of petitioner. It is nowhere in evidence of respondent that forest department has been declared or notified as seasonal worker as required under the law.

13. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when she had absented from duty calling upon her to resume duty or explain the cause for her unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before any taking action against workman Again there is no iota of evidence showing that the respondent had initiated any action in the absence of petitioner from duty. It is evident from record that no explanation of petitioner was called even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when she absented as per the mandays referred to

above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

14. It has also come in the evidence that muster roll had not been issued for whole month in a year. No muster roll was issued as petitioner is showing to have not given any work however it is evident from the mandays chart Ex. RW1/B that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason and that no letter or notice whatsoever had been issued qua any non attendance and as such the case of petitioner given fictional breaks cannot be disbelieved. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 2006 to 2009 which is an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of “continuous service” envisaged under Section 25-F of the Act.

15. Another aspect of the case which can not be lost sight while appreciating evidence is that junior workmen were allowed to work and petitioner was disengaged. Examination of RW1 the then Divisional Forest Officer on oath revealed that one Shyam Singh was junior to respondent. Similarly, Love Kumar had joined in service on 1.2.1998 and her services had been regularized from the date of 1st appointment i.e. 1.2.1998 with all consequential benefits of her services except payment of back wages as Shyam Singh is admittedly junior to the petitioner as per contents of Ex. PW1/C which is the seniority list of daily wagers of Joginder Nagar showing that Shyam Singh was appointed in the year 2008. The plea of petitioner remains that principle of ‘Last come First go’ envisaged under Section 25-G of the Act has not been followed by respondent. Ld. AR/counsel for the petitioner has contended that applicability of Section 25-G of the Act it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year. That being so, the relief sought for by petitioner is liable to be given in view of violation of the provisions of Section 25-G of the Act. Thus, petitioner/claimant has succeed in establishing that fictional breaks had been given to her illegally by respondent due to which she could not complete 240 days in any calendar year more so when respondent had failed to prove allegation of abandonment. It is accordingly held that respondent had given fictional breaks time to time to the petitioner which is illegal and unjustified as has been come in the evidence. Since the petitioner herself has admitted in cross-examination that she was employed with the respondent so she could not be awarded back wages although she is entitled to continuity in service from the date of initial engagement as well as seniority **except back wages**. Issue in question is decided accordingly.

ISSUE NO.2

16. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted for computation of entire services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned that in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks with the object that she did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.3

17. Ld. Dy. D.A. for State contended that there is inordinate delay on the part of petitioner when filed the claim petition or raised industrial dispute due to which she is not entitled any relief.

It may not be erroneous to mention here that petitioner has been continuously working with the respondent and the fictional breaks were given to her of and on by the respondent through its subordinate official for which she raised industrial dispute. The fictional breaks are stated to have been given from 2006 to 2009. Be it noticed that in cross-examination of petitioner by respondent no question on delay has been asked. Even from facts in evidence no inference of delay and laches can be drawn. Accordingly, it is held that claim petition is not bad on account of delay and laches which is also supported by the judgment of **Ajayab Singh vs. Sirhind Cooperative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**. Accordingly, issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.4

18. This issue was not pressed by the Id. Dy. D.A. at the time of arguments which is decided unpressed in favour of petitioner and against respondent.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 47/2013

Date of Institution : 25.04.2013

Date of decision : 28.07.2015

Smt. Sarpa Devi w/o Shri Roshan Lal alias Jai Singh, r/o Village and Post Office Binga,
Tehsil Sarkaghat, District Mandi, H.P. *...Petitioner*

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District
Mandi, H.P.Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Kumar Sharma, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Sarpa Devi, W/O Shri Roshan Lal alias Jai Singh, R/O Village and Post Office Binga, Tehsil Sarkaghat, District Mandi, H.P. during year 2006 by The Divisional forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P. without complying the provisions of the Industrial Disputes Act, 1947 and non regularization as per the policy of the Government, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent as daily rated forest worker w.e.f. 01.7.1998 and petitioner worked as such till date with fictional breaks. The grievance of petitioner remains that the respondent did not allow petitioner to complete 240 days in the years of 2001, 2002 and 2006. Not only this, while giving fictional breaks in the years aforesaid but the respondent had allowed to complete 240 days to the persons junior to petitioner. The name of juniors are Ramesh Kumar and Jagdish Chand who were allowed to complete 240 days in the aforesaid years and thereafter their services had been regularized by the respondent/department in the year 2009. Thus, retaining junior persons and giving fictional breaks to petitioner/claimant and terminating her services could not be construed that work and funds were not available with the department when the services of petitioner had been terminated from time to time giving fictional breaks. It is alleged that petitioner had made several requests to the respondent department not to give fictional breaks but the respondent had given fictional breaks to the petitioner which is stated to be arbitrary, illegal, discriminatory. It is further alleged that petitioner had made so many representations with the respondent department requesting it to not to grant the fictional to petitioner but of no avail. Thereafter, petitioner had raised demand notice on 22.6.2011 when conciliation proceedings between claimant/petitioner, respondent took place before Labour Officer but conciliation failed and respondent did not admit the claim of petitioner and therefore appropriate government had referred the matter to this court for adjudication. Accordingly, petitioner seeks relief to the extent that fictional breaks illegally given to her be treated and counted as period of continuity in service for the purposes of her regularization w.e.f. 2009 when the persons junior to petitioner were regularized along with all consequential benefits. The petitioner further alleges that during the break period she was not gainfully employed anywhere.

4. The respondent resisted claim petition, filed reply inter-alia taken preliminary objections qua maintainability, cause of action, petition being bad on account of delay and laches. On merits admitted that petitioner was initially engaged in forest department in September, 1998 instead of July, 1998 as casual labourer for seasonal forestry works like plantation and nursery keeping in view the availability of funds and work. It is claimed that petitioner was still continuing to work with the department as per availability of work and budget. Further asserted that the forest work was seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although she had not completed 240 days of work in the years 2001, 2002 & 2006 of her own due to absence from work. It is further alleged that Ramesh Chand s/o Purbia Ram was engaged as daily waged forest worker on August, 1998 and worked continuously and he completing 240 days in each calendar year. Shri Jagdish Chand was initially engaged on July, 1998 and in pursuance to court orders, who was regularized as peon during October, 2009. It is alleged that the abovenamed workers are senior to petitioner and they had been regularized as per policy of state government. It is further alleged that the casual labourers were engaged only when works and funds were available with the respondent/department and while engaging labourers, the seniority list of casual labourers was strictly followed by the respondent but the petitioner failed to complete 240 days of work in year 2006. Relying upon seniority list of casual labourers, it is contended that work was provided to petitioner as and when it was available with the department. It is asserted that petitioner engaged herself in agricultural work and remained gainfully employed and did not attend the job assigned to her by the respondent department. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated her stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit under Order 18 Rule 4 CPC, Ex. PW1/B copy of demand notice, Ex. PW1/C report of conciliation officer dated 10.5.2012, Ex. PW1/D copy of letter dated 24.2.2014 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, Ex. RW1/B1 mandays chart of petitioner period from 1/2006 to 9/2006, Ex. RW1/C mandays chart of Ramesh Chand, daily wager, Ex. RW1/D officer order dated 30.12.2009/10, Ex. RW1/E mandays chart of Jagdish Chand, Ex. RW1/F office order dated 30.12.2009, Ex. RW1/G copy of order dated 5.7.2000 passed in OA (M) 405/99, Ex. RW1/H is the Divisional Level Seniority list of casual labour daily wagers of Joginder Nagar Forest Division (as it stood on 31.12.2012) and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on by my Id. predecessor on 11.11.2014 for determination:

1. Whether time to time termination of the petitioner by the respondent during the 2006 is illegal and unjustified as alleged. If so, its effect? OPP
2. Whether the claim petition is not maintainable in the present form? OPR
3. Whether the petitioner has not a cause of action? OPR

4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? OPR
5. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : Unpressed

Issue No.4 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. Stepping into the witness box as PW1, petitioner has sworn in her affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which she was engaged and continued to work uninterruptedly. She has specifically deposed on oath that in the years 2001, 2002 and 2006, her services had been engaged and disengaged by respondent by giving fictional breaks to petitioner. It is also stated that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks in the years 2001, 2002 & 2006, petitioner could not complete 240 days. Petitioner has also maintained on oath that her coworkers namely Ramesh Kumar and Jagdish Chand were not given fictional breaks who completed 240 days in each year and their services have been regularized. The petitioner has also deposed about the process of conciliation before the Labour Officer which failed consequent upon which reference was made by the appropriate government before this court for adjudication.

11. Ex. RW1/B is the mandays chart of petitioner reflecting that she had been appointed in the month of September, 1998 and was still working when the claim petition was filed. The contents of said document revealed that working mandays showing that petitioner to have worked for 135 days in the year 2013, 73 days in 2012, 133 days in 2011, 317 days in 2010, 278 days in 2009, 263 days in 2008, 268 days in 2007 and 199 days in 2006. Ex. RW1/H is the seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31.12.2012 which shows the name of petitioner which figured at serial no.22 who is shown to have joined on September, 1998. Cross-examination of petitioner as PW1 reveals that she was still employed with the respondent. She has although admitted that department/respondent had regularized the services of only those workers who had completed 240 days or more but the case of petitioner primarily reveals that she had been given fictional breaks and that persons who were junior to her were retained and she was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year.

12. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of September, 1998. This facts find supports from mandays chart

Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 135 days in the year 2013, 73 days in 2012, 133 days in 2011, 317 days in 2010, 278 days in 2009, 263 days in 2008, 268 days in 2007 and 199 days in 2006 and therefore when petitioner had served respondent for more than 240 days in several calendar years as per mandays chart it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly established that the same has been made to escape liability qua claim of petitioner. It is admittedly nowhere in evidence of respondent that forest department has been declared or notified as seasonal work as required under the law.

13. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by the parties pleading so. Simply because workman fails to report for duty cannot be construed to mean that workman has 'abandoned' the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when she had absented from duty calling upon her to resume duty or explain the cause for her unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before any taking action against workman. Again there is no iota of evidence showing that the respondent had initiated any action in the absence of petitioner from duty. It is evident from record that no explanation of petitioner was called even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when she absented as per the mandays referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

14. It has not come in the evidence on record that muster roll had not been issued for whole month in a year although petitioner is shown to have given work but it is evident from the mandays chart Ex. RW1/B that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason and that no letter or notice whatsoever had been issued qua non attendance and as such the plea of petitioner having been given fictional breaks cannot be disbelieved. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent in the year 2006 which is an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of 'continuous service' envisaged under Section 25-F of the Act.

15. In view of foregoing evidence on record it can be safely concluded that artificial/fictional breaks in service was given by respondent to petitioner deliberately in arbitrary manner during year 2006 which is an unfair labour practice within the meaning of Industrial Disputes Act and the break period has to be counted for the purposes of "continuous service" envisaged under Section 25-F of the Act.

16. The plea of petitioner that principle of 'Last come First go' envisaged under Section 25-G of the Act has not been followed by respondent. Ld. AR/counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has been held in **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. Ld. counsel for the petitioner has contended that as per mandays chart Ex. RW1/B claimant /petitioner is shown to have worked from 1998 (i.e. w.e.f. 9/1998). Ex. RW1/B is Muster roll wise mandays chart of petitioner in which muster roll for months of January, February, April, May, 2006 are shown to be not traceable and in the month of October, November & December, 2006 no muster roll is shown to have been issued to petitioner. Ex. RW1/C is mandays chart of Ramesh Chand s/o Purbia Ram wherein Ex. RW1/D is his appointment letter. Ex. RW1/E is the mandays chart of Jagdish Chand who is shown to have

initially joined on July, 1998 wherein Ex. RW1/F is the copy of letter of appointment dated 30.12.2009 in favour of Jagdish Chand. Be it noticed that in seniority list Ex. RW1/H neither name of Ramesh Chand nor Jagdish Chand is shown which shows that record relied by respondent does not depict true position. Significantly, RW1 Shri Rajeev Kumar, the respondent has admitted that services of Jagdish Chand and Ramesh Chand have been regularized. On the other hand, PW1 has revealed on oath in cross-examination that Ramesh Chand was junior to her. If version of PW1 is relied, it goes to show that junior person to petitioner has been regularized and thus breaks in service given to petitioner and thereby not allowing her to complete 240 days gets established from evidence on record. Accordingly, respondent is held to have violated provision of Section 25-G of the Industrial Disputes Act. Accordingly, petitioner/claimant has succeeded in establishing that fictional breaks had been given to her illegally by respondent due to which she could not complete 240 days in any calendar year more so when respondent had failed to prove allegation of abandonment. It is accordingly held that respondent had given fictional breaks time to time to the petitioner which is illegal and unjustified as has been discussed in foregoing paras. Issue in question is decided accordingly.

ISSUE NO. 2

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted her services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is no specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks with the object that she did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.3

18. This issue is not pressed by Ld. Dy.D.A. at the time of arguments which is decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

19. Ld. Dy. D.A. for State contended that there is inordinate delay on the part of petitioner when filed the claim petition or raised industrial dispute due to which she is not entitled any relief. It may not be erroneous to mention here as per my findings in foregoing paras, petitioner is held to be continuously working with the respondent, the fictional breaks given to her of and on by the respondent through its subordinate official for which she raised industrial dispute. The fictional breaks are stated to have been given from 1998 to 2012. Be it noticed that in cross-examination of petitioner by respondent no question on delay has been asked. Even from facts in evidence no inference of delay and laches can be drawn. Accordingly, it is held that claim petition is not bad on account of delay and laches which is also supported by the judgment of **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**. Accordingly, issue in hand is answered in negative in favour of petitioner and against respondent.

RELIEF

20. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the

seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 83/2014

Date of Institution : 24.2.2014

Date of decision : 28.7.2015

Shri Gojru Ram s/o Shri Dhani Ram, r/o Village Dundh, P.O. Dul, Tehsil Joginder Nagar,
District Mandi, H.P. ...Petitioner

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District
Mandi, H.P.Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dinesh Singh, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Gojru Ram, S/O Shri Dhani Ram, R/O Village Dundh, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 2004 to

2013 by the Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District Mandi, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent as beldar w.e.f. September, 2001 but the department with mala fide intention and ulterior motive did not allow the petitioner to complete 240 days. The grievance of petitioner remains that the respondent had given fictional breaks to petitioner with a view that petitioner did not allow to take the benefit of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for brevity). Not only this, the services of petitioner had been terminated w.e.f. 26.12.2008 without following the proper procedure and thereafter petitioner had challenged the said order by way of demand notice and later the matter was brought before Labour Court and same was dismissed as petitioner was engaged by respondent. It was further directed by Tribunal to grant seniority and continuity in service to the petitioner with liberty to take appropriate steps regarding fictional breaks. It is also alleged that giving of fictional breaks to petitioner is illegal and in violation of the mandatory provisions of the Act which constituted unfair labour practice within the meaning of Vth Schedule of the Act. Accordingly, petitioner seeks relief to the extent that fictional breaks illegally given to him be treated and counted as period of continuity in service with all consequential benefits in the interest of justice.

4. The respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits admitted that petitioner was initially engaged in forest department on September, 2001 as casual labourer and not as daily waged forest worker as claimed for seasonal forestry work keeping in view the availability of funds and work as reflected in mandays chart. It is claimed that petitioner is still continuing to work intermittently with the department. Asserted that the forest work was primarily seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although he had not completed 240 days of work so far in any calendar year. It is emphatically denied that any fictional break was given to petitioner with the object that he could not get the benefit of the provisions of Section 25-B of the Act. Similarly, violation of principle of '**Last come First go**' has been alleged as against respondent when filed reply in which maintained that no person junior to petitioner has been engaged continuously. Relying upon seniority list of casual labourers, it is contended that work was provided to petitioner as and when it was available with the department. It is alleged that petitioner had never worked with the respondent department in the years 2000, 2001 and 2003. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works, the same did not constitute unfair labour practice rather petitioner engaged himself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC, Ex. PW1/B order dated 6.12.2011 passed by this court in Reference no. 19/2011, Ex. P1 copy of seniority list of daily wagers of Joginder Nagar, Ex. P2 copy

of Award dated 13.1.2005 passed in reference no.278/2001 and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, Ex. RW1/C is the Divisional Level Seniority list of casual labour daily wagers of Joginder Nagar Forest Division (as it stood on 31.12.2012) and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and ld. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on by my ld. predecessor on 12.11.2014 and finally recasted the issues for determination:

1. Whether time to time termination of services of the petitioner by the respondent during 2004 to 2013 is illegal and unjustified as alleged. If so, its effect? OPP
2. Whether the claim petition is not maintainable in the present form? OPP
3. Whether the petition is bad on account of delay and laches as alleged. If so, its effect? OPR
4. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief: Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. Stepping into the witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which he was engaged and continued to work uninterruptedly with the respondent. It is also stated that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks from the initial engagement till today, petitioner could not complete 240 days. Petitioner has denied that Bimla Devi was not junior to him. He further denied that respondent department had not engaged any junior to him.

11. Ex. RW1/B is the mandays chart of petitioner reflecting that he had been appointed in the month of January, 1999 and was still working when the claim petition was filed. The contents of said document revealed abstract of working mandays showing petitioner to have worked for 193 days in the year 2013, 178 days in 2012, 173 days in 2011, 190 days in 2010, 204 days in 2009, 133 days in 2008, 121 days in 2007, 208 days in 2006, 149 days in 2005, 102 days in 2004, 97 days in 2002 and 25 days in 1999. Ex. RW1/H is the seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31.12.2012 which shows the name of petitioner which figured

at serial no.24 who is shown to have joined on 01.1.1999. Cross-examination of petitioner as PW1 reveals that he was still employed with the respondent. He has although admitted that department/respondent had regularized the services of only those workers who had completed 240 days or more but the case of petitioner primarily reveals that he had been given fictional breaks and that persons who were junior to him were retained and he was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year.

12. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of January, 1999. This facts find supports from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 193 days in the year 2013, 178 days in 2012, 173 days in 2011, 190 days in 2010, 204 days in 2009, 133 days in 2008, 121 days in 2007, 208 days in 2006, 149 days in 2005, 102 days in 2004, 97 days in 2002 and 25 days in 1999 and therefore when petitioner had served respondent for more than 200 days in several calendar years as per mandays chart it could not be construed that petitioner was a seasonal worker instead the plea so raised by respondent manifestly established in order to escape liability, plea of forestry work being seasonal in nature. It is nowhere in evidence of respondent that forest department has been declared as seasonal worker as required under the law.

13. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was issued or served to petitioner by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before taking any action against workman Again there is no iota of evidence on record showing that the respondent had initiated any action due to absence of petitioner from duty. It is evident from record that no explanation of petitioner was called, even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when he absented as per the mandays chart referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

14. It is admitted case of the parties that while engaging petitioner no appointment letter was given. While working even in some months, muster rolls were not at all issued. The mandays chart Ex. RW1/B reveals that petitioner was engaged and disengaged whimsically in arbitrary manner without cogent reason besides no letter or notice whatsoever had been issued by respondent qua non-attendance of petitioner and as such the case of petitioner having been given fictional breaks cannot be disbelieved. It may be noticed that in year 2000, 2001, 2003 no muster roll was issued as can be seen from Ex. RW1/B which further strengthens plea of petitioner on the point of respondent working in arbitrary manner. In view of foregoing evidence on record, it can be safely concluded that artificial/fictional breaks in service was provided to petitioner by respondent from 1999 to 2013 which is an unfair labour practice within the meaning of Industrial Disputes Act and said fictional break period has to be counted for the purposes of "continuous service" envisaged under Section 25-B of the Act.

15. Another aspect of the case which cannot be lost sight while appreciating evidence on record is that junior workmen were allowed to be retained and that petitioner was disengaged arbitrarily by respondent in violation of Section 25-G of the Act. Examination of RW1, the then Divisional Forest Officer on oath revealed that one Nirmla Devi and Love Kumar were junior to petitioner who were retained in service leading to inference that while retrenching petitioner, junior

workmen were allowed to be retained in service which showed arbitrariness and whimsical manner in which petitioner was disengaged ignoring his seniority. As Nirmla Devi is admittedly junior to the petitioner per contents of Ex. P1 which is the seniority list of daily wagers of Joginder Nagar Forest Division besides one Bimla Devi figuring at serial no. 54 of Ex. RW1/C is also junior to petitioner. Respondent on oath has also admitted this fact. As such, the principle of 'Last come First go' envisaged under Section 25-G of the Act is held to have not been followed by respondent. Ld. AR/counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon'ble Apex Court in case titled as **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time to the petitioner which is illegal and unjustified as has come in the evidence. As the petitioner himself has not discharged initial onus qua remaining unemployed during break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority **except back wages** for the reasons stated hereinabove. Issue in question is decided accordingly.

ISSUE NO.2

16. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.3

17. Ld. Dy. D.A. for State contended that there is inordinate delay on the part of petitioner when filed the claim petition or raised industrial dispute due to which he is not entitled any relief. It may not be erroneous to mention here that petitioner has been continuously working with the respondent and the fictional breaks were given to him of and on by the respondent through its subordinate official for which he raised industrial dispute. The fictional breaks are stated to have been given from 1999 to 2013. Be it noticed that in cross-examination of petitioner by respondent no question on delay has been asked. Even from facts in evidence no inference of delay and laches can be drawn. Accordingly, it is held that claim petition is not bad on account of delay and laches which is also supported by the judgment of **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**. Accordingly, issue in hand is answered in negative in favour of petitioner and against respondent.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the

seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 84/2014

Date of Institution : 24.2.2014

Date of decision : 28.7.2015

Shri Rikhi Ram s/o Shri Dhoba Ram, r/o Village Bagra, P.O. Dul, Tehsil Joginder Nagar,
District Mandi, H.P. ...Petitioner

Versus

The Divisional Forest Officer, Joginder Nagar Forest Division, Joginder Nagar, District
Mandi, H.P.Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Dinesh Singh, Adv.
 Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Rikhi Ram S/O Shri Dhoba Ram, R/O Village Bagra, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 1998 to

2013 by the Divisional Forest Officer, Joginder Nagar Forest Division Joginder Nagar, District Mandi, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner/claimant had been engaged by respondent as beldar w.e.f. January, 1994 but the department with mala fide intention and ulterior motive did not allow the petitioner to complete 240 days. The grievance of petitioner remains that the respondent had given fictional breaks to petitioner with a view that petitioner did not allow to take the benefit of the Industrial Disputes Act, 1947 (hereinafter called as 'the Act' for brevity). It is also alleged that giving of fictional breaks to petitioner is illegal and in violation of the mandatory provisions of the Act which constituted unfair labour practice within the meaning of Chapter V-A of the Act. It is stated that petitioner had served the respondent department to the best of his ability and full satisfaction of the respondent department and there was no complaint against petitioner regarding his work. Accordingly, petitioner seeks relief to the extent that fictional breaks illegally given to him be treated and counted as period of continuity in service with all consequential benefits in the interest of justice.

4. The respondent resisted claim petition, filed reply inter-alia taken preliminary objections of maintainability. On merits, admitted that petitioner was initially engaged in forest department on February, 1994 as casual labourer and not as daily waged forest worker as alleged for seasonal forestry works keeping in view the availability of funds and work as reflected in mandays chart. It is claimed that petitioner is still continuing to work intermittently with the department. Asserted that the forest work was seasonal in nature and only casual labourer were engaged by the department on the basis of need of work and availability of funds and disengaged after completion of work or its funds. Thus, petitioner is stated to be still working as casual labourer on various seasonal forestry works although he had not completed 240 days of work so far in any calendar year. It is emphatically denied that any fictional break was given to petitioner with the object that he could not get the benefit of the provisions of Section 25-B of the Act. Similarly, violation of principle of 'Last come First go' has been alleged as against respondent when filed reply in which maintained that no persons junior to petitioner has been engaged continuously. Relying upon seniority list of casual labourers, it is contended that work was provided to petitioner as and when it was available with the department. It is also specifically asserted that in view of engagement of petitioner for seasonal forestry works the same did not constitute unfair labour practice rather petitioner engaged himself in agricultural work and remained gainfully employed and did not attend the job assigned by the respondent. Thus, petitioner is stated to be not entitled to any relief. Accordingly, petition was sought to be dismissed. Reply filed by respondent is supported by affidavit.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition and contentions raised by the respondent had been denied by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar as RW1 tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B the mandays chart of petitioner, Exts. R1 to R7 are the copies of notices, Ex. RW1/C is the Divisional Level Seniority list of casual labour daily wagers of Joginder Nagar Forest Division (as it stood on 31.12.2012) Ex.

P1 copy of seniority list of daily wagers of Joginder Nagar, Ex. P2 copy of Award dated 13.1.2005 passed in reference no.278/2001 and closed evidence and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on by my Id. predecessor on 07.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during 1998 to 2013 is illegal and unjustified as alleged. If so, its effect? OPP
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? OPP
3. Whether the claim petition is not maintainable in the present form as alleged? OPR
4. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Relief : Petition is allowed in part per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Stepping into the witness box as PW1, petitioner has sworn in his affidavit Ex. PW1/A under Order 18 Rule 4 CPC stipulating therein the manner in which he was engaged and continued to work uninterruptedly with the respondent. It is also stated that the fictional breaks had been given by respondent with the object that petitioner did not complete 240 days of work for the purpose of continuous service and that due to fictional breaks from the initial engagement till today, petitioner could not complete 240 days. He admitted that notices Ex. R1 to Ex. R7 were issued to the petitioner but the said notices were not received by the petitioner because there is no record on the file to establish that the notices issued by the respondent were received by the petitioner. He admitted that he is working with the respondent department.

12. Ex. RW1/B is the mandays chart of petitioner reflecting that he had been appointed in the month of January, 1999 and was still working when the claim petition was filed. The contents of said document revealed abstract of working mandays showing petitioner to have worked for 168 days in the year 2013, 160 days in 2012, 153 days in 2011, 209 days in 2010, 215 days in 2009, 214 days in 2008, 225 days in 2007, 178 days in 2006, 217 days in 2005, 223 days in 2004, 207 days in

2003, 227 days in 2002, 203 days in 2001, 225 days in 2000, 235 days in 1999, 128.5 days in 1998, 93 days in 1997, 166 days in 1996, 134 days in 1995 and 144 days in 1994. Ex. RW1/H is the seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31.12.2012 which shows the name of petitioner which figured at serial no.6 is shown to have joined on 02.1.1994. Cross-examination of petitioner as PW1 reveals that he was still employed with the respondent. He has although admitted that department/respondent had regularized the services of only those workers who had completed 240 days or more but the case of petitioner primarily reveals that he had been given fictional breaks and that persons who were junior to him were retained and he was not issued muster roll for whole month. It would, therefore, apt to scrutinize entire evidence so as to determine if fictional breaks had been given with the object that petitioner did not complete 240 days in a given year and could avail benefit of Section 25-B of the Act.

13. It is the admitted case of the parties that services of petitioner were engaged as daily wager by respondent in the month of January, 1999. This facts find supports from mandays chart Ex. RW1/B. Be it noticed that the respondent has not placed/exhibited or filed any document establishing that the services of petitioner were engaged for undertaking forestry works only. Otherwise also, the mandays chart unfolds the fact that petitioner had worked for 168 days in the year 2013, 160 days in 2012, 153 days in 2011, 209 days in 2010, 215 days in 2009, 214 days in 2008, 225 days in 2007, 178 days in 2006, 217 days in 2005, 223 days in 2004, 207 days in 2003, 227 days in 2002, 203 days in 2001, 225 days in 2000, 235 days in 1999, 128.5 days in 1998, 93 days in 1997, 166 days in 1996, 134 days in 1995 and 144 days in 1994 and therefore when petitioner had served respondent for more than 200 days in several calendar years as per mandays chart it could not be concluded with certainty that petitioner was a seasonal worker instead the plea so raised by respondent manifestly established that in order to escape liability, plea of forestry work being seasonal in nature has been taken by respondent. Be it noticed tht it is nowhere in evidence of respondent that forest department has been declared as seasonal work as required under the law.

14. It also remains the plea of respondent that the petitioner/claimant himself had abandoned the job of respondent. It is settled principle of law that plea of 'abandonment' has to be proved like any other fact by respondent/department. Simply because workman fails to report for duty cannot be construed to mean that workman has abandoned the job. There is no iota of evidence on record establishing that any notice was ever issued except the notices Ex. R1 to Ex. R7 which were issued only for the months of January, February, March, April, May, June and July, 2013 by respondent when he had absented from duty calling upon him to resume duty or explain the cause for his unauthorized absence as absence from duty is serious misconduct requiring initiation of departmental proceedings before any taking action against workman but there is no documentary evidence on record to show that abovestated notices were served/accepted by petitioner. It is also uncertain from respondent's evidence if any notice was issued to petitioner to resume duties whenever he absented from 1998 to 2012 however some notices Ex. R1 to Ex. R7 were issued but it is not certain if those were factually served on petitioner. Again there is no iota of evidence showing that the respondent had initiated any action in the absence of petitioner from duty which is a serious misconduct. It is evident from record that no explanation of petitioner was called even no show cause notice was issued by respondent qua absence of petitioner from duty from time to time when he absented as per the mandays referred to above. Thus, the plea of abandonment or absence from duty put forth by the respondent also merits rejection being devoid of merits.

15. It is admitted case of the parties that no written appointment letter was issued by respondent at the time of engagement of petitioner. As per the mandays chart on record, petitioner was not issued muster roll for the whole of the month however some workmen were allowed to complete 240 days who were given muster roll for whole of the month. In view of foregoing evidence on record, it can be safely concluded that artificial/fictional breaks in service was given to petitioner by respondent from 1998 to 2013 which is an "unfair labour practice" within the meaning

of Industrial Disputes Act and the break period has to be counted for the purposes of “continuous service” envisaged under Section 25-B of the Act.

16. Another aspect of the case which cannot be lost sight while appreciating evidence on record is that junior workmen were allowed to be retained and that petitioner was disengaged arbitrarily by respondent in violation of Section 25-G of the Act. Examination of RW1, the then Divisional Forest Officer on oath revealed that one Nirmla Devi and Love Kumar were junior to petitioner who were retained in service leading to inference that while retrenching petitioner, junior workman was allowed to be retained in service which showed arbitrary manner in which petitioner was disengaged ignoring his seniority. As Nirmla Devi is admittedly junior to the petitioner per contents of Ex. P1 which is the seniority list of daily wagers of Joginder Nagar Forest Division besides respondent on oath has also admitted this fact the principle of ‘Last come First go’ envisaged under Section 25-G of the Act is held to have not been followed by respondent. Similarly, Love Kumar who is also junior to petitioner because he had joined in service on 1.2.1998 and his services had been regularized from the date of 1st appointment i.e. 1.2.1998 with all consequential benefits of his services except payment of back wages. Be it noticed that even Nirmla Devi shown in Ex. P1 is junior to petitioner having been appointed on 1.3.2000 and was still continuing without any break in service. Ld. AR/counsel for the petitioner has contended that for applicability of Section 25-G of the Act, it is not necessary that the petitioner should have worked for 240 days atleast in a calendar year as has also been held by Hon’ble Apex Court in case titled as **Central Bank of India vs. S. Satyam, 1996 (5) SCC 419**. That being so, the relief sought for by petitioner is liable to be granted in view of violation of the provisions of Section 25-G of the Act by respondent. Thus, petitioner/claimant has succeeded in establishing that fictional breaks had been given to petitioner illegally by respondent due to which he could not complete 240 days in any calendar year more-so when respondent had failed to prove allegation of abandonment as stated above. It is accordingly held that respondent had given fictional breaks from time to time to the petitioner which is illegal and unjustified as has come in the evidence. As the petitioner himself has not discharged initial onus qua remaining unemployed during break period, so he cannot be awarded back wages however petitioner is entitled to relief of continuity in service from the date of initial engagement as well as seniority **except back wages** for the reasons stated hereinabove. Both these issues in hand are decided accordingly in favour of petitioner and against respondent.

ISSUE NO.3

17. Ld. Dy. D.A. representing State/respondent department has contended that claim petition is not maintainable. As has come in my findings in foregoing paras that respondent had deliberately given fictional breaks to petitioner by not issuing any muster roll for the whole month in a calendar year, it cannot not be stated that the petitioner cannot claim that the period of fictional break be counted in his services under Section 25-B of the Industrial Disputes Act. Otherwise also, it is not specifically mentioned in what manner the claim petition is not maintainable. Since petitioner is a workman working with the respondent who had been given fictional breaks, as stated in foregoing paras, with the object that he did not complete 240 days, the claim petition cannot be stated to be not maintainable. Both these issues in hand are answered in negative in favour of petitioner and against respondent.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference

is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 361/2014

Date of Institution : 16.12.2014

Date of decision : 28.07.2015

Shri Jai Chand s/o Shri Dhani Ram, r/o Village Mihara, P.O. Dul, Tehsil Joginder Nagar,
District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Jai Chand S/O Shri Dhani Ram, R/O Village Mihara, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during January 1999 to 2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar,

District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. January, 1999 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1999 to 30.09.2007. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

3. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from January, 1999 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time

benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

4. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

5. To prove his case, petitioner had examined herself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar, Ex. PX copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks and closed the evidence.

6. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

7. From the contentions raised, following issues were framed on 12.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year January, 1999 to 2007 is/was illegal and unjustified as alleged? OPP
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? OPP
3. Whether the claim petition is not maintainable in the present form as alleged? OPR
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? OPR
5. Relief.

8. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

9. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

10. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. January, 1999 is not in dispute. It is the admitted case of petitioner that petitioner had worked since January, 1999 but he had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own, used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

11. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 179 days, 171 days in the year 2000, 170.5 days in 2001, 149 days in 2002, 169 days in 2003, 155 days in 2004, 163 days in 2005, 151 days in 2006, 216 days in 2007, 364 days in 2008, 363 days in 2009, 365 days in 2010, 363 days in 2011, 351 days in 2012, 365 days in 2013 and 363 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PX direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 1998 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in January, 1999. Since respondent had not disputed to have engaged petitioner in January, 1999, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse him legitimate right of regularization in service.

12. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

13. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Himal Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 1999 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

14. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

15. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party

to be impleaded in this case. Claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that he was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

RELIEF

16. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 372/2014

Date of Institution : 16.12.2014

Date of decision : 28.07.2015

Shri Revat Ram s/o Shri Gain Chand, r/o Village Siyathi, P.O. Jhamehar, Tehsil Joginder Nagar, District Mandi, H.P. ...Petitioner

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Revat Ram S/O Shri Gain Chand, R/O Village Siyathi, P.O. Jhamehar, Tehsil Joginder Nagar, District Mandi, H.P. August, 1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. June, 1997 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1997 to 30.09.2007. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2004 and 10 years of continuous service on 31.12.2006 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25- H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State

of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from December, 1998 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined herself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar, Ex. PX copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 12.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year August, 1998 to 31.8.2007 is/was illegal and unjustified as alleged? OPP

2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? OPP
3. Whether the claim petition is not maintainable in the present form as alleged? OPR
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? OPR
5. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. June, 1997 is not in dispute. It is the admitted case of petitioner that petitioner had worked since June, 1997 but he had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own, used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 55 days, 144 days in 1999, 164 days in 2000, 17.5 days in 2001, 158.5 days in 2002, 154 days in 2003, 170 days in 2004, 156 days in 2005, 159 days in 2006, 226 days in 2007, 364 days in 2008, 365 days in 2009, 361 days in 2010, 363 days in 2011, 354 days in 2012, 355 days in 2013 and 88 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be

pertinent to state here that vide letter dated 14.9.2007 Ex. PX direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 1998 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in January, 1999. Since respondent had not disputed to have engaged petitioner in September, 1998, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse him legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1998 to 2007 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1998 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1998 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Himal Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of

the petitioner and giving fictional breaks in service by the respondent from 1998 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respndent only PW1 has admitted in cross-examination that he was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

RELIEF

17. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 359/2014

Date of Institution : 16.12.2014

Date of decision : 28.07.2015

Smt. Krishna Devi w/o Shri Roop Singh, r/o Village Tarapur, P.O. Tikroo, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. *....Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Krishan Devi W/O Shri Roop Singh, R/O Village Tarapur, P.O. Tikroo, Tehsil Joginder Nagar, District Mandi, H.P. during year 1997 to year 1999 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed her statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. August, 1997 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in her name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, her services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1997 to 1999. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the

period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2004 and 10 years of continuous service on 31.12.2006 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from May, 1997 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of her (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with her verbal requests from time to time, she was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per her convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1

tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar, Ex. PX copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 12.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year 1997 to 1999 is/was illegal and unjustified as alleged? OPP
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? OPP
3. Whether the claim petition is not maintainable in the present form as alleged? OPR
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? OPR
5. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. August, 1997 is not in dispute. It is the admitted case of petitioner that petitioner had worked since August, 1997 but she had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working

intermittently as she of her own, used to not come on her duty besides she willfully absented several times from her duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from her duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties. Rather, it is projected to be case as if petitioner came of her own for work and left the work of her own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1997 petitioner had worked for 99 days, 224 days in 1998, 213 days in 1999, 326 days in 2000, 293 days in 2001, 279 days in 2002, 287 days in 2003, 324 days in 2004, 341 days in 2005, 342 days in 2006, 355 days in 2007, and 318 days in 2008. It can be noticed that till 1999 petitioner has worked for less than 240 days whereas for other remaining years she had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PX direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 1997 prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in January, 1999. Since respondent had not disputed to have engaged petitioner in September, 1997, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial engagement and thus fictional breaks in no manner would affect or eclipse him legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 1997 to 1999 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, she has admitted that she has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1997 to 1999 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. she has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. She has admitted that petitioner has been engaged in the year 1997 who had not been issued any appointment letter. She has denied that petitioner had been deliberately given breaks in the years from 1997 to 1999 but she could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty any notice was issued for unauthorized absence and the version of RW1 that she came and go of her own from duty cannot be accepted which manifestly appear to be

afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1998 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Himal Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 1997 to 1999 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** particularly when she has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of her own and did not join her duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respndoent only PW1 has admitted in cross-examination that she was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

RELIEF

17. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall,

however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 306/2014

Date of Institution : 26.9.2014

Date of decision : 28.07.2015

Smt. Ruma Devi w/o Shri Milkhi Ram, r/o Village Sanahli, P.O. Tullah, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. *....Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Ruma Devi, W/O Shri Milkhi Ram, R/O Village Sanahli, P.O. Tullah, Tehsil Joginder Nagar, District Mandi, H.P. during April 1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past

service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed her statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. April, 1999 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in her name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, her services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1999 to 2007. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from April, 1999 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of her (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with her verbal requests from time to time, she was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per her convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their

services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove her case, petitioner had examined herself as PW1 tendered/proved her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 12.5.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the year April, 1999 to 31.8.2007 is/was illegal and unjustified as alleged? OPP
2. If issue no.1 is proved in affirmative, to what services benefits the petitioner is entitled to? OPP
3. Whether the claim petition is not maintainable in the present form as alleged? OPR
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? OPR
5. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. April, 1999 is not in dispute. It is the admitted case of petitioner that petitioner had worked since April, 1999 but she had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as she of her own, used to not come on her duty besides she willfully absented several times from her duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from her duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for her unauthorized absence from her duties. Rather, it is projected to be case as if petitioner came of her own for work and left the work of her own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 132 days, 219 days in 2000, 148 days in 2001, 171 days in 2002, 171 days in 2003, 170 days in 2004, 169 days in 2005, 167 days in 2006, 232 days in 2007, 360 days in 2008, 338 days in 2009, 360 days in 2010, 357 days in 2011, 350 days in 2012 and 361 days in 2013. It can be noticed that till 1999 petitioner has worked for less than 240 days whereas for other remaining years she had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant/petitioner was engaged in 1999 prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from her termination was definitely a fictional break as in remaining years she had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002, 2003 and 2004 except at serial no. 6 who had joined earlier to petitioner as workman at serial no.7 joined in the year 1999 whereas petitioner had joined in April, 1999. Since respondent had not disputed to have engaged petitioner in April, 1999, she ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of her legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming her seniority and continuity in service from her initial

engagement and thus fictional breaks in no manner would affect or eclipse him legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that she had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, she has admitted that she has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. she has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. She has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter. She has denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but she could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from her duty any notice was issued for unauthorized absence and the version of RW1 that she came and go of her own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for her absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet she cannot be deprived of her legitimate right to seek seniority as well as continuity in service from her date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Shri Chanchal s/o Shri Tirth Ram who joined in July, 2000 as per Ex. RW1/D has been regularized but he was not given any fictional break in 2000 to 2007 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 1999 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, she is to be given benefit of seniority and continuity in service **except back wages** particularly when she has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of her own and did not join her duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that she was working with respondent although she earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

RELIEF

17. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of her initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and her seniority shall be reckoned from her initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. She shall, however, be considered for regularization by respondent at the time when her juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 113/2012

Date of Institution : 06.1.2012

Date of decision : 28.07.2015

Shri Om Prakash s/o Shri Bhadar Singh, r/o Village Ladwan, P.O. Pipli, Tehsil Joginder Nagar, District Mandi, H.P. *...Petitioner*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether termination of services/giving breaks of Shri Om Prakash S/O Shri Bhadar Singh, Village Ladwan, P.O. Pipli, Tehsil Joginder Nagar, District Mandi, H.P. by the Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, District Mandi, H.P. from time to time during year 2001 to August, 2007, without complying with provisions of Section 25-F, G & H of the Industrial Disputes Act, 1947, as the abandonments are not proved but admitting non-availability of work during certain periods, as per policy of the Government and availability of funds and continuous employment of certain juniors, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled for the above mentioned period from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that petitioner was engaged as daily rated beldar by respondent w.e.f. 1.6.2001 in its National Highway Division, Joginder Nagar and later he (petitioner) worked with the respondent in the newly created HPPWD Division in 2004 but he was given fictional breaks from time to time from his initial engagement till 31.8.2007. It is alleged that he was issued muster rolls for 15 days in a month, though the work was available for the entire month but, his juniors namely Dalip Singh, Gautam Singh, Geeta Devi, Pradeep Kumar, Kishhori Lal, Sanjay Kumar, Bhag Mal, Nihal Chand, Anil Kumar and Chanchal. were not given such breaks and they were allowed to complete 240 days in each calendar year and the above named juniors have now been regularized. It is alleged that the respondent has stopped giving fictional breaks to the petitioner from 01.9.2007 and thereafter, the petitioner has completed 240 days in each calendar year. Therefore, there has been violation of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act, for short). The petitioner thus has filed a demand notice with the labour department but matter could not be reconciled as the petitioner has prayed for giving him the benefit of seniority, regularization and back wages etc.

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections of maintainability, petition being bad for non-joinder of necessary parties and claim petition being bad on account of delay and laches. On merits, engagement of the petitioner from June, 2001 is admitted. The allegation of giving fictional breaks up-to 31.8.2007 has been specifically denied. It is alleged that the work was made available to the petitioner as per the requirement and availability of the funds from time to time as per mandays chart annexure-RII and R-III and that all the workers in the annexure R-III were senior to the petitioner who have since been regularized. It is further alleged that the disengagement of the workmen on the availability of the funds and the work was strictly in accordance with the policy of ‘last come first go’ and thus allegation of violation of Section 25-F, 25-G and 25-H of the Industrial Disputes Act has been specifically denied. Thus, relying upon the plea of reference of regularization of petitioner, cause of

action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered Ex. RW1/A copy of letter dated 9th December, 2003, Ex. RW1/B regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar, Ex. PX copy of letter dated 14th September, 2007 and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed by my ld. predecessor on 26.9.2012 for determination:

1. Whether the termination of the services/giving fictional breaks in service to the petitioner by the respondent from time to time from the year 2001 to August, 2007 is illegal and unjustified as alleged? OPP
2. Whether the petition is not maintainable in the present form? OPR
3. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? OPR
4. Whether the petition is bad on account of delay and laches on the part of the petitioner as alleged. If so, its effect? OPR
5. Relief.

9. It would be pertinent to mention here that my Ld. Predecessor- in-office vide order dated 19.1.2013 had dismissed the reference petition on the ground that petitioner failed to adduce any evidence in support of his claim. Aggrieved that impugned order so passed by my ld. Predecessor, claimant/petitioner preferred CWP No.5489/2014 before the Hon'ble High Court of Himachal Pradesh and vide order dated 20.8.2014, the Hon'ble High Court of H.P. has allowed the Civil Writ Petition so filed by the present claimant/petitioner and order dated 19.1.2013 passed by my ld. Predecessor was set aside and petitioner was permitted to lead evidence before the Labour Court on 6.9.2014.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. 01.6.2001 is not in dispute. It is the admitted case of petitioner that he had worked since June, 2001 but he had been deliberately given fictional breaks by respondent so that he did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own use to not come on his duty besides he willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that he willfully absented from his duties is devoid of merit as there is nothing in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own and worked left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Geet Devi, Dalip Singh, Goutam Singh and Anil Kumar have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

13. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 2001 petitioner had worked for 51 days, 168.5 days in 2002, 141 days in 2003, 168 days in 2004, 156 days in 2005, 168 days in 2006, 230 days in 2007, 364 days in 2008, 365 days in 2009, 356 days in 2010, 365 days in 2011 and 87 days in 2012. It can be noticed that in the several years petitioner has worked for less than 240 days, whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PX direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but his instruction appears to be have been completely ignored as claimant petitioner was engaged in 2001 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2002, 2003 and 2004 except at serial nos. 1, 7, 8 & 10 who had joined earlier to petitioner as workman at serial no.3 joined in 2002 whereas petitioner had joined in 2001. Since respondent had not disputed to have engaged petitioner in June, 2001, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and that fictional breaks in no manner would affect or eclipse him legitimate of regularization in service.

14. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2001 to

2007 by giving fictional break whereas the persons junior to her have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided more than 240 days of work after 2007 which means the dispute is only for the years 2001 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers who have been shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2001 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 2001 to 2007 but he could not plead as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 2001 to 2007 get substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in employment at the time of passing of having fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 2001 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the peculiar circumstances of the case. Issue in question is decided in part in favour of the petitioner and against the respondent.

ISSUE NO.2

15. On non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has not pressed this plea. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised. As such, issue in hand is answered in negative against the respondent and in favour of petitioner.

ISSUE NO.3

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respndont only PW1 has admitted in cross-examination that he was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.4

17. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not

come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement, the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petition is hereby allowed and reference is accordingly answered in his favour. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
 INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 184/2015

Date of Institution : 21.4.2015

Date of decision : 28.07.2015

Shri Dev Raj s/o Shri Bartu Ram, r/o Village and P.O. Kahanpat, Tehsil Palampur, District Kangra, H.P. ...Petitioner

Versus

1. The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla.

2. The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P.

....Respondents

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by worker Shri Dev Raj S/O Shri Bartu Ram, R/O Village and P.O. Kahanpat, Tehsil Palampur, District Kangra, H.P. before the (1)The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla (2) The Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P. vide demand notice dated 04.06.2011 regarding his alleged illegal termination of service w.e.f. 31.03.2006 suffers from delay and latches? If not, Whether termination of the services of Shri Dev Raj S/O Shri Bartu Ram, R/O Village and P.O.Kahanpat, Tehsil Palampur, District Kangra, H.P. employed as daily wage worker in the Indo German Changer Project, Palampur, District Kangra, H.P., managed by the H.P. Eco Development Society, on the completion of project w.e.f. 31.03.2006 by (1)The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla (2) The Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P. without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages,

seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 01.1.1995 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 8682/2014 which was decided on 3.12.2014 vide which appropriate

Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. The respondents resisted the claim petition, filed joint reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his

sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D letter dated 10.3.2006, Ex. PW1/E letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/F letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/H copy of mandays of Atma Ram & others, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K copy of notice, Ex. PW1/L copy of letter dated 30.7.2013, Ex. PW1/M letter dated 22.9.2014, Ex. PW1/N details of employees who appointed on secondment basis, Ex. PW1/O copy of letter dated 11.9.2014, Ex. PW1/P copy of letter dated 18.9.2014, Ex. PW1/Q detail of class-IV staff engaged after 3.12.2009, Exts. PW1/R, PW1/S & PW1/T are letters dated 20.2.2009, 21.10.2010 and 12.5.2009 from DFO Palampur to petitioner and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C copy of registration certificate of HP Eco Development Society, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur, Ex. RW1/E copy of Annexure dated 4.2.1993, Ex. RW1/F letter dated 20.2.2006 regarding closure of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed on 04.7.2015 for determination.

1. Whether termination of services of the claimant/petitioner by the respondents w.e.f. 31.03.2006 is/was illegal and unjustified as alleged? OPP
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? OPP
3. Whether the claim petition is not maintainable in the present form? OPR
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? OPR
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? OPR
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at

any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in crossexamination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Dev Raj figures at serial no.2 who is shown to have been appointed on 01.1.1995 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1995 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. January, 1995 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/K was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner alongwith other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP

Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/F stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.12.2009 Ex. PW1/G was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/S in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/T dated 12.5.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through it officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo- German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with crossexamination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with

forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the foregoing discussion, it is held that the relationship of workman and employer existed

between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25- F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO.3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

20. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., ld. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 183/2015

Date of Institution : 21.4.2015

Date of decision : 28.07.2015

Shri Parshotam Chand s/o Shri Sant Ram, r/o Village Simbielahar, P.O. Kahanpat, Tehsil Palampur, District Kangra, H.P. *...Petitioner*

Versus

1. The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla.

2. The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. *....Respondents*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by worker Shri Parshotam Chand s/o Shri Sant Ram, r/o Village Simbielahar, P.O. Kahanpat, Tehsil Palampur, District Kangra, H.P. before (1)The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla (2) The Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P. vide demand notice dated 03.06.2011 regarding his alleged illegal termination of service w.e.f. 31.03.2006 suffers from delay and laches? If not, Whether termination of the services of Shri Parshotam Chand s/o Shri Sant Ram, r/o Village Simbielahar, P.O. Kahanpat, Tehsil Palampur, District Kangra, H.P. employed as daily wage worker in the Indo German Changer Project, Palampur, District Kangra, H.P., managed by the H.P. Eco Development Society, on the completion of project w.e.f. 31.03.2006 by (1)The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla (2) The

Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P. without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 01.7.1995 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner,

Shimla by filing CWP no. 8682/2014 which was decided on 3.12.2014 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. The respondents resisted the claim petition, filed joint reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by

forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D letter dated 10.3.2006, Ex. PW1/E letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/F letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/H copy of mandays of Atma Ram & others, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K copy of notice, Ex. PW1/L copy of letter dated 30.7.2013, Ex. PW1/M letter dated 22.9.2014, Ex. PW1/N details of employees who appointed on secondment basis, Ex. PW1/O copy of letter dated 11.9.2014, Ex. PW1/P copy of letter dated 18.9.2014, Ex. PW1/Q detail of class-IV staff engaged after 3.12.2009, Exs. PW1/R, PW1/S & PW1/T are letters dated 20.2.2009, 21.10.2010 and 12.5.2009 from DFO Palampur to petitioner and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C copy of registration certificate of HP Eco Development Society, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur, Ex. RW1/E copy of Annexure dated 4.2.1993, Ex. RW1/F letter dated 20.2.2006 regarding closure of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed on 04.7.2015 for determination.

1. Whether termination of services of the claimant/petitioner by the respondents w.e.f. 31.03.2006 is/was illegal and unjustified as alleged?

OPP

2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to?

OPP

3. Whether the claim petition is not maintainable in the present form?

OPR

4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect?

OPR

5. Whether the claim petition is bad for non joinder of the necessary party as alleged?

OPR

6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at

any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in crossexamination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Parshotam Chand figures at serial no.5 who is shown to have been appointed on 01.7.1995 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1995 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. July, 1995 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/K was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner alongwith other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP

Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/G stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.12.2009 Ex. PW1/F was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/S in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/T dated 12.5.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through it officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with crossexamination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with

forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed

between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25- F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO.3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

20. Id. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 185/2015

Date of Institution : 21.4.2015

Date of decision : 28.07.2015

Shri Ravi Kumar s/o Shri Purshotam Chand, r/o Village Thalehad, P.O. Gagal Kholi, Tehsil Palampur, District Kangra, H.P. *...Petitioner*

Versus

3. The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla.

2. The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. *....Respondents*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
Sh. Vijay Kaundal, Adv.

For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by worker Shri Ravi Kumar S/O Shri Purshotam Chand, R/O Village Thalehad, P.O. Gagal Kholi, Tehsil Palampur, District Kangra, H.P. before (1)The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla (2) The Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P. vide demand notice dated 03.06.2011 regarding his alleged illegal termination of service w.e.f. 31.03.2006 suffers from delay and latches? If not, Whether termination of the services of Shri Ravi Kumar S/O Shri Purshotam Chand, R/O Village Thalehad, P.O. Gagal Kholi, Tehsil Palampur, District Kangra, H.P. employed as daily wage worker in the Indo German Changer Project, Palampur, District Kangra, H.P., managed by the H.P. Eco Development Society, on the completion of project w.e.f. 31.03.2006 by (1)The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla (2) The

Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P. without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. July, 1993 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner,

Shimla by filing CWP no. 8682/2014 which was decided on 3.12.2014 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. The respondents resisted the claim petition, filed joint reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by

forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D letter dated 10.3.2006, Ex. PW1/E letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/F letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/H copy of mandays of Atma Ram & others, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K copy of notice dated 15.2.2006 from IGCP Palampur to Sushil Kumar, Ex. PW1/L copy of letter dated 30.7.2013, Ex. PW1/M letter dated 22.9.2014, Ex. PW1/N details of employees who appointed on secondment basis, Ex. PW1/O copy of letter dated 11.9.2014, Ex. PW1/P copy of letter dated 18.9.2014, Ex. PW1/Q detail of class-IV staff engaged after 3.12.2009, Exts. PW1/R and PW1/S are letters dated 20.2.2009 & 21.10.2010 from DFO Palampur to petitioner and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C copy of registration certificate of HP Eco Development Society, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur, Ex. RW1/E copy of Annexure dated 4.2.1993, Ex. RW1/F letter dated 20.2.2006 regarding closure of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed on 04.7.2015 for determination.

1. Whether termination of services of the claimant/petitioner by the respondents w.e.f. 31.03.2006 is/was illegal and unjustified as alleged? OPP
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? OPP
3. Whether the claim petition is not maintainable in the present form? OPR
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? OPR
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? OPR
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at

any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Ravi Kumar figures at serial no.6 who is shown to have been appointed on 01.7.1993 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1993 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. July, 1993 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Crossexamination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/K was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP

Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/F stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.12.2009 Ex. PW1/G was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/S in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/R dated 20.2.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through it officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo- German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with

forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed

between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO.3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

20. Id. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, (H.P.).

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 186/2015

Date of Institution : 21.4.2015

Date of decision : 28.07.2015

Shri Saroop Chand s/o Shri Mangat Ram, r/o Village Rakar, P.O. Kural, Tehsil Palampur,
District Kangra, H.P. *Petitioner.*

Versus

4. The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh,
Shimla.

2. The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P.
.. . . . *Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by worker Shri Saroop Chand s/o Shri Mangat Ram, r/o Village Rakar, P.O. Kural, Tehsil Palampur, District Kangra, H.P. before (1)The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla (2) The Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P. vide demand notice dated 03.06.2011 regarding his alleged illegal termination of service w.e.f. 31.03.2006 suffers from delay and laches? If not, Whether termination of the services of Shri Saroop Chand s/o Shri Mangat Ram, r/o Village Rakar, P.O. Kural, Tehsil Palampur, District Kangra, H.P. employed as daily wage worker in the Indo German Changer Project, Palampur, District Kangra, H.P., managed by the H.P. Eco Development Society, on the completion of project w.e.f. 31.03.2006 by (1)The

Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla
(2) The Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P. without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. July, 1993 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference

for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 8682/2014 which was decided on 3.12.2014 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report s stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. The respondents resisted the claim petition, filed joint reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice

as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D letter dated 10.3.2006, Ex. PW1/E letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/F letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/H copy of mandays of Atma Ram & others, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K copy of notice, Ex. PW1/L copy of letter dated 30.7.2013, Ex. PW1/M letter dated 22.9.2014, Ex. PW1/N details of employees who appointed on secondment basis, Ex. PW1/O copy of letter dated 11.9.2014, Ex. PW1/P copy of letter dated 18.9.2014, Ex. PW1/Q detail of class-IV staff engaged after 3.12.2009, Exts. PW1/R, PW1/S & PW1/T are letters dated 20.2.2009, 21.10.2010 and 12.5.2009 from DFO Palampur to petitioner and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C copy of registration certificate of HP Eco Development Society, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur, Ex. RW1/E copy of Annexure dated 4.2.1993, Ex. RW1/F letter dated 20.2.2006 regarding closure of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed on 04.7.2015 for determination.

1. Whether termination of services of the claimant/petitioner by the respondents w.e.f. 31.03.2006 is/was illegal and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? *OPP*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR*.
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? . . .*OPR*.
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at

any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Saroop Chand figures at serial no.3 who is shown to have been appointed on 01.6.1993 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1993 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. July, 1993 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Crossexamination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/K was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP

Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/F stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.12.2009 Ex. PW1/G was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/S in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/T dated 12.5.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo- German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with

forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed

between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO.3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

20. Id. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 187/2015

Date of Institution : 21.4.2015

Date of decision : 28.07.2015

Shri Mahinder Singh s/o Shri Piar Singh, r/o Village Bah, P.O. Rajhoon, Tehsil Palampur,
District Kangra, H.P. *. Petitioner.*

Versus

5. The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh,
Shimla.
2. The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P.
. Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner	: Sh. N.L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.
For the Respondent(s)	: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by worker Shri Mahinder Singh s/o Shri Piar Singh, r/o Village Bah, P.O. Rajhoon, Tehsil Palampur, District Kangra, H.P. before the (1)The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla (2) The Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P. vide demand notice dated 04.06.2011 regarding his alleged illegal termination of service w.e.f. 31.03.2006 suffers from delay and latches? If not, Whether termination of the services of Shri Mahinder Singh s/o Shri Piar Singh, r/o Village Bah, P.O. Rajhoon, Tehsil Palampur, District Kangra, H.P. employed as daily wage worker in the Indo German Changer Project, Palampur, District Kangra, H.P., managed by the H.P. Eco Development Society, on the completion of project w.e.f. 31.03.2006 by (1)The Principal Chief Conservator of Forest, Forest Department,

Himachal Pradesh, Shimla (2) The Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P. without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 01.1.1995 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e. Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference

for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 8682/2014 which was decided on 3.12.2014 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. The respondents resisted the claim petition, filed joint reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice

as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D letter dated 10.3.2006, Ex. PW1/E letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/F letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wage workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/H copy of mandays of Atma Ram & others, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K copy of notice, Ex. PW1/L copy of letter dated 30.7.2013, Ex. PW1/M letter dated 22.9.2014, Ex. PW1/N details of employees who appointed on secondment basis, Ex. PW1/O copy of letter dated 11.9.2014, Ex. PW1/P copy of letter dated 18.9.2014, Ex. PW1/Q detail of class-IV staff engaged after 3.12.2009, Exts. PW1/R, PW1/S & PW1/T are letters dated 20.2.2009, 21.10.2010 and 12.5.2009 from DFO Palampur to petitioner and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C copy of registration certificate of HP Eco Development Society, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur, Ex. RW1/E copy of Annexure dated 4.2.1993, Ex. RW1/F letter dated 20.2.2006 regarding closure of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed on 04.7.2015 for determination.

1. Whether termination of services of the claimant/petitioner by the respondents w.e.f. 31.03.2006 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR.*
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? . . .*OPR.*
6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at

any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in crossexamination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Mahinder Singh figures at serial no.1 who is shown to have been appointed on 01.1.1995 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1995 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. January, 1995 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on muster roll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/K was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross-examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner alongwith other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department. Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP

Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/F stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.12.2009 Ex. PW1/G was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 20.2.2009 by Divisional Forest Officer, Palampur letter Ex. PW1/T in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/S dated 12.5.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by ld. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through it officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo-German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with

forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitioner switched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed

between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO.3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent. **ISSUE NO.4**

20. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., ld. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Cooperative Marketing cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 188/2015

Date of Institution : 21.4.2015

Date of decision : 28.07.2015

Shri Ram Saroop s/o Shri Shali Ram, r/o Village Chambi, P.O. Rajhun, Sub Tehsil Dheera,
District Kangra, H.P. . .Petitioner.

Versus

6. The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla.
2. The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. . .Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner	: Sh. N.L. Kaundal, AR
	: Sh. Vijay Kaundal, Adv.
For the Respondent(s)	: Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by worker Shri Ram Saroop S/O Shri Shali Ram, R/O Village Chambi, P.O. Rajhun, Sub Tehsil Dheera, District Kangra, H.P. before the (1)The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla (2) The Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P. vide demand notice dated 03.06.2011 regarding his alleged illegal termination of service w.e.f. 31.03.2006 suffers from delay and latches? If not, Whether termination of the services of Shri Ram Saroop S/O Shri Shali Ram, R/O Village Chambi, P.O. Rajhun, Sub Tehsil Dheera, District Kangra, H.P employed as daily wage worker in the Indo German Changer Project, Palampur, District Kangra, H.P., managed by the H.P. Eco Development Society, on the completion of project

w.e.f. 31.03.2006 by (1) The Principal Chief Conservator of Forest, Forest Department, Himachal Pradesh, Shimla (2) The Divisional Forest Officer, Forest Division, Palampur, District Kangra, H.P. without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. In pursuance to notices issued by this Court, petitioner appeared, filed claim petition stipulating therein that he had been engaged on daily waged basis on muster roll w.e.f. 07.8.1993 by forest department but no appointment order was issued and at the same time no terms and conditions were settled by respondent department who had deputed petitioner giving verbal directions to work in Indo German Changar Project Palampur (hereinafter called IGCP Palampur) on which control of State Government of H.P. existed and thus petitioner claims to have worked under the control and supervision of forest officers besides he had also worked with Bishan Dass and Sushil Kumar and that he continued to work uninterruptedly till 31st March, 2006 without any break and had completed 240 days in each calendar year and would thus be deemed to be in continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the "Act"). It is also alleged that salary of petitioner was paid by forest department and that the work and conduct of petitioner had been found satisfactory but to his utter surprise, services of petitioner were unlawfully retrenched/terminated by respondent w.e.f. 31.3.2006 without prior notice. On questioning the department about his retrenchment, he was informed that Government had decided to close the IGCP Palampur and his services were no more required. It is claimed that at the time of his unlawful retrenchment, about 85 daily waged workmen had been retrenched along-with petitioner. Claiming requirement of issuance of three months notice pay in lieu of notice period as required under Section 25-N of the Act the petitioner had been issued only notice for one month but no retrenchment compensation envisaged under Section 25-N read with Section 25-F (b) of the Act had been paid and even prior permission from the appropriate Govt. envisaged under the relevant Act has not been sought and thus termination of petitioner is alleged to be illegal, null and void as the respondent has failed to follow the procedure under Chapter VA and VB of the Act. It is claimed that some of the daily wagers who worked along-with petitioner had been adjusted by the respondent in the department arbitrarily. The petitioner along-with other retrenched workmen consequent thereto approached the government when State Government had taken decision to reengage the retrenched daily waged workers of IGCP Palampur for which Additional Chief Secretary Government of Himachal Pradesh wrote letter dated 17.11.2008 stipulating that 99 daily waged worker of IGCP Palampur and 258 daily waged workers of Kandi Project retrenched were contemplated to be reengaged by state government in different departments where vacant posts existed in similar cadre. Thereafter, forest authorities had also asked several government departments to send details of vacancies so as to adjust the retrenched workers as stated above. It is alleged that petitioner was also asked to send written consent/willingness for reengagement however it has been specifically alleged that petitioner as well as several other retrenched workmen had submitted their written consent showing their willingness but till now, none including petitioner has been reengaged or adjusted by respondent or the State Government. It is alleged that Under Secretary (Revenue) Govt. of H.P. had issued a letter dated 3rd December, 2009 intimating therein that 512 vacancies were lying vacant in revenue department and that due to shortage of staff there existed necessity to fill up these posts and State Government had again taken the decision to reengage daily waged workers of IGCP Palampur and IWDP (Hills) Kandi area and thereafter, another letter was issued to the Chief Conservator (Forest) to send the category wise name of 169 daily waged worker of Kandi Project and IGCP Palampur along-with written consent of these employees for their reengagement and seniority. It is alleged that despite that petitioner has not been engaged so far who had conveyed his willingness to respondent lastly on 11.2.2010. Thereafter, Labour Officer, Dharamshala tried to settle the dispute but failed and consequently submitted report under Section 12(4) of the Act and referred the matter to appropriate Govt. i.e.

Labour Commissioner, Shimla. It is alleged that Labour Commissioner declined to make reference for adjudication to Labour Court when petitioner assailed the decision of Labour Commissioner, Shimla by filing CWP no. 8682/2014 which was decided on 3.12.2014 vide which appropriate Govt. had been directed to make reference to Labour Court in pursuance to which the present reference has been received.

3. Averments made in the claim petition further revealed that one Bishan Dass s/o Sh. Kirpa Ram had been engaged as beldar w.e.f. 5.9.1993 in IGCP Palampur without any appointment letter and without settling terms and conditions in writing however the said workman had worked upto 31.12.2001 without any break who had completed 240 days in each calendar year but his services had been unlawfully terminated by respondent department without complying the mandatory provisions of Sections 25-F and 25-G of the Act when the said official raised demand notice qua his illegal termination forwarding a copy to conciliation officer. After receipt of failure report as stated above, the appropriate Govt. referred the matter to Labour Court, Dharamshala for adjudication which had reference no.117/2007 and on merits, the above said reference was decided in favour of Bishan Dass with full back wages, seniority with all consequential service benefits. The Award passed by Labour Court was assailed by respondent by filing CWP no.2511 of 2009 which was dismissed by Hon'ble High Court of H.P consequent upon which the State of H.P. had filed an appeal against order of Hon'ble High Court before the Hon'ble Apex Court by filing Special Leave Petition no. 5588 of 2011 which was even not admitted. Thereafter Bishan Dass as worker of IGCP had been reengaged by respondent department who has been working as class-IV on regular pay scale as govt. employee. Similarly, one Sushil Kumar s/o Shri Bhim Sen whose services had been retrenched by respondent along-with the petitioner had sought information under RTI Act and vide letter dated 2nd January, 1994 it was intimated that the services of Sushil Kumar had been reengaged by respondent on 30.8.2013 who is presently working with the respondent department. The grievance of the petitioner remains that from 2006 to 2010, the respondent as well as higher authorities of State Government had made false assurances that retrenched workers of IGCP Palampur including petitioner would be absorbed by giving services in other government departments and due to this reason petitioner had not raised any industrial dispute earlier and thus respondent cannot take plea that there was delay in raising industrial dispute. Claiming that the act of respondent to retrench the services of petitioner w.e.f. 31.3.2006 was highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act, the same was liable to be set aside. Accordingly, prayer has been made to set aside illegal retrenchment order dated 31.3.2006 with further direction to respondent to reengage the services of petitioner with full back wages, seniority, continuity with all consequential service benefits throughout with costs of litigation.

4. The respondents resisted the claim petition, filed joint reply inter-alia taken preliminary objections qua maintainability, petition being bad on account of delay and laches, petition being bad for non joinder of necessary parties and that closure of IGCP Palampur was due to non availability of funds. It is contended that in view of judgment of Hon'ble Apex Court reported in S.C. Service Law Judgments 1996 (2) 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** it has been held that if an employee was appointed for a particular project, on closure of the project employee concerned has to go along-with project. On merits, respondent has denied relationship of employer and employee between the parties, however, maintained that prior to retrenchment one month's notice had been served upon petitioner as per law and there was no violation of any provision of the Act. It is also contended that petitioner had been engaged subject to availability of funds and his appointment was with the object to provide work only in IGCP Palampur. It is also asserted that respondent department had no power to reengage the petitioner without prior approval of the Government of H.P. although, admitted that Bishan Dass was engaged by respondent as beldar on 5.9.1993 but petitioner was engaged by IGCP Palampur

besides denied to have violated any provisions of the Act. It is maintained that retrenchment notice as required under law was served however admitted that Sushil Kumar was previously engaged by forest department as daily waged worker till 1997 who afterwards joined IGCP Palampur at his sweet will and said Sushil Kumar is stated to have been engaged as per the order of Court. Accordingly, claim petition was sought to be dismissed.

5. The petitioner filed rejoinder to reply by respondent, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of office order dated 19.11.2001 of Director IGCP, Palampur, Ex. PW1/C letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur, Ex. PW1/D letter dated 10.3.2006, Ex. PW1/E letter dated 1.1.2009 reengagement of daily waged workers of IGCP and IWDP (Hills) Kandi Area, Ex. PW1/F letter dated 3rd December, 2009 of Govt. of H.P. for reengagement of daily wager workers of IGCP Palampur and IWDP (Hills) Kandi Area, Ex. PW1/G letter dated 15th December, 2009 from Addl. Chief Secretary to the Govt. of H.P. to reengage daily waged workers, Ex. PW1/H copy of mandays of Atma Ram & others, Ex. PW1/I seniority list of daily wages driver working in IGCP Palampur, Ex. PW1/J information under RTI Act. Ex. PW1/K copy of notice dated 15.2.2006 from IGCP Palampur to Sushil Kumar, Ex. PW1/L copy of letter dated 30.7.2013, Ex. PW1/M letter dated 22.9.2014, Ex. PW1/N details of employees who appointed on secondment basis, Ex. PW1/O copy of letter dated 11.9.2014, Ex. PW1/P copy of letter dated 18.9.2014, Ex. PW1/Q detail of class-IV staff engaged after 3.12.2009, Exts. PW1/R and PW1/S are letters dated 20.2.2009 & 21.10.2010 from DFO Palampur to petitioner and closed evidence.

7. On the other hand, repudiating the evidence led by the petitioner, respondent had examined Shri B.S. Yadav, the Divisional Forest Officer who tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B list of daily wages workers working under IGCP Palampur, Ex. RW1/C copy of registration certificate of HP Eco Development Society, Ex. RW1/D letter dated 17.4.2006 regarding representation of daily wagers of IGCP Palampur, Ex. RW1/E copy of Annexure dated 4.2.1993, Ex. RW1/F letter dated 20.2.2006 regarding closure of IGCP Palampur and closed evidence.

8. I have heard the Authorized Representative/counsel as well as Ld. Dy. D.A. for respondent gone through evidence on record carefully relevant for disposal of the present reference.

9. From contentions raised, following issues were framed on 04.7.2015 for determination.

1. Whether termination of services of the claimant/petitioner by the respondents w.e.f. 31.03.2006 is/was illegal and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form? . . .*OPR.*
4. Whether the claim petition is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR.*
5. Whether the claim petition is bad for non joinder of the necessary party as alleged? . . .*OPR.*

6. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Yes

Issue No.3 : Unpressed

Issue No.4 : No

Issue No.5 : Unpressed

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it is apt to mention here that relationship of petitioner being employee/workman of respondent department is in dispute. It is the case of the respondent that petitioner had never been engaged by respondent department although admitted that petitioner was employed in IGCP Palampur a foreign aided project. It is admitted case of respondent that the above stated project was manned under the supervision and control of senior government officers headed by Secretary (Forest) to govt. of H.P. and Principal Chief Conservator of Forest, HP. It is also admitted case of respondent that the above stated IGCP Palampur had been closed in 2006 and on the closure of project, the Eco Development Society registered with the Registrar Cooperative Societies in the year 1992 had handed over entire records of IGCP Palampur to respondent and that said Eco Development Society was still in existence. It also remains the case of respondent that it cannot reengage petitioner without prior approval of government of H.P. It is equally admitted case of parties that no appointment letter was ever issued to petitioner and that no terms and conditions of services of petitioner were settled. It would, therefore, be relevant to consider that in absence of any written appointment letter and settlement of any terms and conditions, inference could be raised that petitioner was appointed with IGCP Palampur only for a limited period or to work till the continuation of project as has been contended by respondent in its reply in which it had relied upon the judgment of Hon'ble Apex Court 1996 (2) S.C. Service Law Judgments 294 titled as **State of Himachal Pradesh, through the Secretary (Rural Development) to the Govt. of Himachal Pradesh vs. Ashwani Kumar & Ors.** in which the Hon'ble Apex Court had held that if worker was appointed specifically to work in project, then on closure of project due to non-availability of funds the temporary employees engaged in the project were not entitled to regularization. In so far as the plea of petitioner being temporary employee appointed only for project as contended by respondent is concerned, this has to be determined with reference to evidence led by petitioner.

13. Ld. Authorized Representative/counsel for the petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2008 LLR 763** titled as **Block Development Officer, Pragpur vs. Yoginder Kumar and Ors.** in which the Hon'ble High Court relying upon the

judgment of Hon'ble Apex Court titled as **S.M. Niljkar and others vs. Telecom, District Manager, Karnataka, 2003 (97) FLR 608** has held that if workman had not been put to notice at any stage in writing that their employment was in project, there could be no contract between the project authorities and the workmen to work in project only. It was observed by the Hon'ble Apex Court in judgment (2003) supra that workman ought to have been apprised or made aware of the fact that his employment would come to an end with the termination of scheme or project. In the case in hand, there is no iota of evidence on record to show that petitioner was appointed for IGCP Palampur and thus petitioner being workman or temporary employee only with IGCP Palampur could not be inferred. Be it noticed that respondent has failed to lead any evidence to establish that petitioner was appointed to work only in IGCP Palampur. RW1 Sh. B.S. Yadav, the then Divisional Forest Officer, Palampur had admitted in cross-examination that entire records of IGCP Palampur was handed over by Eco Development Society to the respondent. Had the petitioner been appointed only in IGCP Palampur, respondent being custodian of entire record of project after closure ought to have produced such record as the same would have established that the petitioner was appointed only for IGCP Palampur as claimed. Certainly, if any written document or record had been in possession of the respondent as admitted by RW1 it must have been produced while leading evidence and thus only conclusion that may be drawn is that petitioner was appointed with forest department and was deputed to work with IGCP Palampur. The fact that petitioner was appointed who remained on muster roll of forest department can be safely inferred from statement of petitioner on oath in absence of any corresponding records which ought to have been produced before this court by respondent to this effect. It is pertinent to mention here that name of present petitioner Ram Saroop figures at serial no.16 who is shown to have been appointed on 07.8.1993 and continued to work till 2006 when he was disengaged on account of closure of project. A bare glance at the mandays chart Ex. RW1/B would reveal that petitioner had worked for more than 240 days ever since 1993 till 2006 immediately prior to his retrenchment.

14. Stepping into witness box as PW1 petitioner has sworn in detailed affidavit Ex. PW1/A stipulating therein that he had worked on daily wage basis on muster roll w.e.f. August, 1993 without any appointment order or without settlement of any terms and conditions of his service and that he had been deputed by respondent vide verbal order to work in IGCP Palampur which was under control of forest department of State Government. Cross-examination of PW1 revealed that he had worked with forest department however has denied that he has been appointed to work in project. Since records produced by parties clearly revealed that engagement of petitioner on musterroll basis by the forest department but his seniority has been reflected in records of IGCP Palampur and that retrenchment notice Ex. PW1/K was issued qua one Sushil Kumar s/o Bhim Sen. It can be noticed that retrenchment notice of said Sushil Kumar was issued but respondent RW1 Shri B.S. Yadav the then Divisional Forest Officer, Palampur has specifically admitted in cross examination that no notice was given to petitioner and at the same time, no compensation was paid to the petitioner as per records handed over to his office by the Eco Development Society concerning IGCP Palampur. Consequently, RW1 has clarified on oath by admitting that on closure of the project, record in question was handed over to his office in which no copy of appointment order existed in favour of the petitioner which establishes that IGCP Palampur had never appointed petitioner or that petitioner was engaged only to work with IGCP Palampur as contended by respondent. As such, from the testimony of PW1 coupled with evidence on record as stated and case law referred above this court is left with no option but to hold that there existed relationship of workman and employer between the parties.

15. The plea of petitioner further remains that after his retrenchment without notice as well as without payment of compensation as required under the law, the respondent department as well as the Government of H.P. kept assuring petitioner along-with other retrenched workers to be absorbed in due course but despite vigorous follow up by the petitioner as well as by the other retrenched employees they have not been absorbed by Government and forest department.

Chronology of events unfolded from pleadings and evidence on record reveal that Government of H.P. through forest department has been trying to adjust all the retrenched workers of IGCP Palampur. It can be noticed from letter dated 3rd December, 2009 copy of which is Ex. PW1/F stipulating therein about reengagement of daily waged workers of IGCP Palampur as well as Kandi Project as against 512 posts in Revenue department. Subsequently, letter dated 15.12.2009 Ex. PW1/G was again written by Addl. Chief Secretary (Forests) to the Govt. of H.P. to Pr. Chief Conservator of Forests for sending category wise names of list of employees of Kandi project as well as IGCP Palampur for written consent. Not only this, petitioner had been issued letter dated 21.1.2010 by Divisional Forest Officer, Palampur letter Ex. PW1/S in which willingness of the petitioner was sought on or before 11.2.2010 and prior to it letter Ex. PW1/T dated 12.5.2009 of Divisional Forest Officer, Palampur in which intimation was given to petitioner that his case has been sent to DGP, H.P. and that willingness/option for particular post of police department has been sent. Thus, it seems that in the year 2009 and 2010 petitioner through correspondence was assured about absorption in other government departments but till the raising the industrial dispute and consequently reference from the Labour Commissioner, petitioner was not appointed or absorbed in other govt. departments. Thus, the very fact that government through its official agency was in touch with the petitioner for his case of absorption and engagement in government job after retrenchment supports the claim of the petitioner on the point of delay in raising industrial dispute on his termination. Ld. counsel for petitioner/claimant has contended with vehemence that present case has similar facts to that of one Bishan Dass s/o Kirpa Ram who had been regularized in pursuance to award passed in reference no.117/2007. It is alleged in para 11 of claim petition that said Bishan Dass was appointed as Beldar in forest department was later deputed to work with IGCP Palampur. It has not been disputed by Id. Dy. D.A. representing respondent that SLP file against the order of Hon'ble High Court of H.P. affirming Award framed in favour of Bishan Dass was not admitted. Hence, on dismissal of appeal by Hon'ble High Court of H.P. Award passed in favour of said Bishan Dass had attained finality. It can also be inferred from reply to para no.11 of the respondent. Be it stated that said Bishan Dass worked as Beldar with Forest Department, later with IGCP Palampur but on raising industrial dispute was reengaged with seniority and continuity in service. On this analogy also, petitioner in the case in hand is entitled to get relief of being reengaged in job with seniority and continuity in service as consequential relief.

16. Repudiating the evidence led by petitioner, Sh. B.S. Yadav RW1, the then Divisional Forest Officer Palampur has denied the claim of petitioner but admitted in cross-examination that IGCP Palampur was under the complete control of State Government. Ex. RW1/C registration certificate shows that H.P. Eco Development Society Palampur was registered under the Cooperative Societies Act, 1860 and was registered on 16th February, 1993. Annexure D-8 appended with said certificate reveal that Shri R.K. Gupta, Project Director, Member Secretary of Changar Eco Development Project, Palampur was authorized to get the H.P. Eco Development Society, Palampur registered under the Societies Act. He was authorized to do so by Chairman who was Secretary (Forests) to the Govt. of H.P. Similarly the society was governed through the governing body which had Secretary (Forests) to govt. of H.P. Pr. Chief Conservator of Forests and other senior govt. officers as members of the governing body which shows that H.P. Eco Development Society, Palampur was run by government through its officials only. Not only this, office order dated 19.11.2001 Ex. PW1/B showed that the governing body's 5th meeting was held and powers were delegated to Dy. Director, Indo-German Eco Development H.P. by the Director IGCP Palampur to sanction muster roll upto the extent of Rs.5,000/- and sanction bills upto 1000/- in all respect. It establishes that the governing body was exercising control over entire functioning of Eco Development Society as well as IGCP Palampur through government officers and even financial powers were delegated under H.P.F.R. 1971 to Dy. Director Indo- German Changar Project, Palampur as stated above. All these documents coupled with cross-examination of respondent showed that after the closure of project, forest department through Divisional Forest Officer, Palampur had received entire record of the project. It is pertinent to mention here that

despite submission of entire records by IGCP Palampur to respondent, it had failed to bring on record muster rolls or wage bills which could remove mystery of petitioner being employed with forest department initially or having been appointed only under the IGCP Palampur. Thus, even when IGCP Palampur was controlled so through the governing body of H.P. Eco Development Society which has remained in existence till now had all its members who were govt. officers as stated above it cannot be stated that the IGCP Palampur was a project on which the government had no control irrespective of fact that it was foreign aided project. Not only this, even on the analogy of case of Bishan Dass, as discussed in foregoing para, petitioner is entitled to be given relief of reengagement with past service benefits with respondent.

17. It has come in evidence of the respondent that neither any compensation was paid nor any retrenchment notice was ever served upon the petitioner who was retrenched on closure of the project. Section 25-F of the Act mandates issuance of one month's notice as well as retrenchment compensation in lieu of notice to the workman in the event of retrenchment and on non-compliance of the same the retrenchment shall be void and illegal. Ld. Authorized Representative has relied upon the judgment of Hon'ble Apex Court reported in **2015 LLR 225** titled as **Jasmer Singh vs. State of Haryana & Anr.** in which Division Bench of the Hon'ble Apex Court has held in unequivocal terms that a workman is entitled to reinstatement with full back wages when termination order is void ab-initio. It was specifically held by the Hon'ble Apex Court that if the workman had completed 240 days in continuous service, preceding 12 calendar months, his termination without compliance of the provisions of Section 25-F of the Act makes the retrenchment/termination illegal entitling workman to reinstatement with back wages. It has come in the evidence that petitioner has been retrenched without notice and compensation and therefore the order of termination would be void ab-initio as it has been done without compliance of Section 25-F of the Act. I have carefully gone through the judgment of Hon'ble Apex Court in which Hon'ble Apex Court has referred to its former judgment titled as **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED) & Ors. 2013 10 SCC 324**. It was observed in para no. 22 of the judgment of (2013) that *"if the employer wants to deny back wages to the employee or contested his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during intervening period the employee was gainfully employed. It was held that benefit of back wages to an employee who had suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including emoluments"*.

18. In the case in hand before this court, the respondent in its reply has specifically alleged in para no. 15 that petitioner was gainfully employed who was agriculturist. Thus, allegation of having not been gainfully employed as claimed by the petitioner was repudiated by the respondent in its reply. In the cross-examination, PW1 has specifically admitted on oath before this court that he was employed as agriculturist. This would also establish that after his retrenchment, petitionerswitched over to agricultural activities and thus remained gainfully employed. Ld. Dy. District Attorney has relied upon the judgment of Hon'ble Apex Court titled as titled as **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that 'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Be it stated here that Hon'ble Apex Court in **Deepali Gundu Surwase's** case has held that the Labour Court was not justified in holding that merely because the respondent was receiving agriculture income, he cannot be treated to be engaged in gainful employment. Since the petitioner had income from agriculture pursuits for his livelihood it cannot

be stated that petitioner was not gainfully employed and thus would not be entitled full back wages. In view of the forgoing discussion, it is held that the relationship of workman and employer existed between petitioner and respondent and that petitioner was illegally retrenched without compliance of Section 25-F of the Act although remained gainfully employed after his retrenchment but was liable to be reengaged with seniority and in continuity in service. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent w.e.f. 31st March, 2006 was illegal and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUES NO.3 & 5

19. Both these issues were not pressed by Id. Dy.D.A. at the time of arguments which are decided unpressed in favour of petitioner and against respondent.

ISSUE NO.4

20. Ld. Dy. D.A. representing respondent department has contended with vehemence that claim petition is bad in the eyes of law on account of delay and laches. It has been pointed that retrenchment of petitioner in this case took place on 31.3.2006 and the industrial dispute was raised after several years of retrenchment. Repudiating the argument by Id. Dy. D.A., Id. counsel/AR for the petitioner has placed reliance upon judgment reported in **2007 LHLJ 903 Hon'ble High Court of H.P. (Bhatag Ram's case)** in which it has been held that delay in raising dispute may be considered by court at the time of granting final relief however in various other judgments even longer delay has been condoned. **In Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, delay of more than 10 years was condoned besides Hon'ble High Court has held that principle of Limitation Act is not applicable to the industrial dispute. Similar view was taken by Hon'ble Apex Court in **Ajayab Singh vs. Sirhind Co-operative Marketing cum-Processing Society Limited and Another, (1999) 6 SCC 82** in which it has been held that the principle of Limitation Act, 1963 did not apply to the proceeding under the Industrial Disputes Act. It was observed that the relief under Industrial Disputes Act cannot be denied merely on the ground of delay. It has been contended that delay if any raised by employer is required to be proved as a matter of fact and that no reference made by appropriate government can be questioned on the ground of delay alone. In the case in hand, respondent department has failed to prove on record any material by which it could be stated that there was inordinate delay which has remained unexplained due to which any prejudice had been caused to the respondent rather petitioner in his evidence has highlighted and proved material facts establishing that on account of repeated assurances of respondent department as well as government as stated in foregoing paragraphs, industrial dispute was not raised by petitioner immediately or earlier on retrenchment and finally raised when despite repeated assurances to absorb the petitioner in govt. department, he was not offered any appointment or absorbed by the government or the respondent. Thus, the petition filed by petitioner cannot be stated to be bad on vice of delay and laches. Issue in question thus is accordingly answered in negative against respondent and in favour of petitioner.

RELIEF

21. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 62/2013

Date of Institution : 27.7.2013

Date of decision : 30.07.2015

Shri Ravinder Kumar Dhiman, Pradhan, Him Shakti Majdoor Sangh PWD Karamchari
Sangh, Branch Jaisinghpur, District Kangra, H.P. . .Petitioner.

Versus

1. The Executive Engineer, HPPWD Division Baijnath, Distt. Kangra, H.P.
2. The Executive Engineer, HPPWD Division Balakrupi, District Kangra, H.P. . .Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner(s) : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent(s) : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of S/Sh. Ravinder Kumar S/O Sh. Raju Ram from the year 1998, Gurbachan Singh S/O Sh. Panjku Ram from 2000, Ranjeet Singh S/O Rikhi Ram from 1998, Raj Kumar S/O Sh. Dhyan Singh from 1998, Suresh Kumar S/O Sh. Hachhu Ram from year 2002, Bakshi Ram S/O Sh. Joban Lal from 1999, Ram Singh S/O Sh. Relu Ram from 1999 and Sarwan Kumar S/O Sh. Nathu Ram from the year 1998 to the year, 2007 by the i) The Executive Engineer, HPPWD Division Baijnath, Distt. Kangra, H.P. ii) The Executive Engineer, HPPWD Division Balakrupi, Distt. Kangra, H.P. without complying with the provisions of the

Industrial Disputes Act, 1947, as alleged by the workmen, is legal and justified? If not, what amount of back wages, salary, seniority, continuity in service, past service benefits and compensation the above workers are entitled to from the above employers?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner had filed his statement of claim.

3. The petitioner who is the President of a registered trade union namely Him Shakti Majdoor Sangh PWD Karamchari Sangh affiliated with Bharitya Mazdoor Sangh has instituted present claim petition for himself and on behalf of several others workmen namely Gurbachan Singh s/o Sh. Panjku Ram, Ranjeet Singh s/o Rikhi Ram, Raj Kumar, s/o Sh. Dhyan Singh, Suresh Kumar s/o Sh. Hachhu Ram, Bakshi Ram s/o Sh. Joban Lal, Ram Singh s/o Sh. Relu Ram and Sarwan Kumar s/o Sh. Nathu Ram who had joined respondents in the years 1998, 2002 and 1997 respectively per reference received from appropriate government and as alleged in para no.2 of claim petition. Averments made in the claim petition revealed that no statement of claim was being filed on behalf of Ranjeet Singh who had already moved to this Court earlier for which reference no. 9/2011 was made earlier. The grievance of the petitioners remain that respondent no.1 without any rhyme or reason had engaged and disengaged all the workmen named above who were originally appointed without any written letter of appointment. These workmen were stated to be appointed on daily wage basis on muster roll. Averments made in the claim petition also revealed that the services of petitioner no.1 had been engaged on daily waged basis on muster roll by Assistant Engineer, HPPWD Sub Division Jaisinghpur on 9.6.1998 and had uninterruptedly worked upto 15.12.1999 and during the said period, petitioner was given fictional breaks by the respondent no.1 so that petitioner no.1 could not complete 240 days however w.e.f. 16.12.1999 services of petitioner no.1 had been terminated without complying with the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter called as ‘the Act’ for brevity). It is also alleged that in pursuance to his termination petitioner no.1 has raised industrial dispute against the respondent no.1 vide demand notice and during conciliation proceedings, it could not be settled amicably and therefore reference had been made by appropriate government to the Labour Court Shimla for adjudication which was registered as reference no.99/2002. It is alleged that during the pendency of petition before the Labour Court Shimla, another court namely Industrial Tribunal-cum-Labour Court Kangra at Dharamshala was created in the month of August, 2004 and that disputes pertaining to eight districts (Kangra, Mandi, Kullu, Bilaspur, Chamba, Una, Hamirpur and Lahaul & Spiti), the present case was transferred by Labour Court Shimla to Labour Court Kangra at Dharamshala. In this case, as reference has been registered i.e. reference no.99/2002 (RBT no.96/2004 which has been decided on 10.5.2005. In the said impugned order, this court had held that disengagement of petitioner by the respondent w.e.f. 16.2.1999 was illegal and unjustified and that petitioner was entitled for reinstatement on the same terms and conditions on which he was appointed/engaged. It is alleged that the services of petitioner no.1 has been engaged by the respondent no.1 on 7.8.2005 which has not been provided continuous muster roll and only muster for 15 or 16 days had been provided w.e.f. 7.8.2005 to September, 2007 who had thus been given 15 or 16 days fictional breaks and thereafter petitioner again raised industrial dispute to condone the illegal break period in continuity of service alongwith other petitioners which has been registered by this court as reference no. 62/2013. It is alleged that all the workmen above named were still working under Assistant Engineer, Sub Division Jaisinghpur from their initial engagement and all these workmen had been issued muster roll only for 15 or 16 days and thus the workmen were not allowed to complete 240 days deliberately besides breaks in question are stated to have been given by the respondent no.1 at his own level whereas the department had not issued any instructions to give fictional breaks to daily waged workers. It is claimed that as per notification no.PBW-A-H(1)-6/2003 dated 14.9.2007 of Principal Secretary to the government of Himachal Pradesh, the services of all workmen are to be engaged continuously without any breaks.

The grievance of all the petitioners further remains that despite availability of works and funds, respondent no.1 had not only given fictional breaks but had ignored the principle of 'Last come First go' in as much as the junior persons to the petitioners has been engaged by the respondent without following the provisions of Section 25-G of the Act. Averments made in the petition reveal that Anil Kumar had joined in 1998, Pink Raj who joined in 1999, Anil Kumar who joined in 2000, Raj Kumar who joined in 2001, Harbans Lal who joined in 2002, Sunil Kumar who joined in 2003, Kundan Lal who joined in 2003, Kanta Devi who joined in 2004, Piar Chand who joined on 2005, Tilak Raj who joined in 2006 and Vinod Kumar who joined in 2007 had been appointed. It is alleged that one Suresh Kumar s/o Sh. Khazan Singh vs. The Executive Engineer, HPPWD, Division Baijnath has been given relief by this court that the services of workman were regularized who was held to be in continuous and uninterrupted service with the respondent. It is specifically alleged that petitioner had continued worked with respondent no.1 from the initial date of engagement to 27.8.2010 and after creation of new Sub Division Balakrupi wherein petitioners were working under the respondent no.2. It is alleged that since all the workmen/petitioners had completed eight to ten years of continuous service who were liable for regularization on work charge status as per the policy of state government. It is stated that respondent no.1 had given break to all the petitioners from the initial date of engagement till 30.9.2007 which is stated to be done in illegal, arbitrary and unconstitutional manner against the mandatory provisions of the Act and same has been alleged to unfair labour practice with the meaning of Vth Schedule of the Act. Accordingly, the petition has been filed through its President and five others who have prayed for grant of relief. Accordingly, the fictional breaks from the date of their initial engagement till 30.9.2007 as well as to condone the said period and services of all the petitioners for the purpose of their regularization and petitioners be also given work charge status as per policy of the government and that petitioners were liable to be regularized w.e.f. 1.1.2006.

4. The respondent resisted the claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, claim petition being bad on account of delay and laches. On merits relationship of petitioners with the respondent has not been disputed. It is specifically alleged that the workmen mentioned in the pleadings had been engaged by the respondent no.1 as daily paid beldar in the year 1997 against each of the workmen/claimant except Ram Singh who had been engaged in the year 1999 and one Sarwan Kumar in 1998 as was evident from the mandays chart relied upon by the respondents. It is also contended that due to paucity of funds and work the respondent no.1 could not provide work to the petitioners. It has been emphatically denied that fictional breaks had been given with the object that petitioner did not complete 240 days. While accepting the correctness of mandays chart, workmen mentioned in para are shown to be engaged in Sub Division Baijnath on regular basis. It is also contended that petitioners had worked initially with the respondent no.1 and thereafter creation of new Division, they were working there. It has been denied that petitioners were entitled for regularization. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove their case, petitioner namely Ravinder Kumar Dhiman had examined himself as PW1 tendered/proved his affidavit under Order 18 Rule 4 CPC and Ex. PW1/B demand notice and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri R.K. Kaushal the then Executive Engineer, HPPWD (B&R) Division Jaisinghpur as RW1, tendered Exts. RW1/B to RW1/H are the copies of mandays chart of Ravinder Kumar, Gurbachan Singh, Raj Kumar, Suresh Kumar, Bakshi Ram, Ram Singh & Sarwan Kumar, Ex. RW1/I is the mandays chart of Smt. Kalan Devi and others and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed by my ld. predecessor on 04.11.2014 for determination:

1. Whether time to time termination of the services of the petitioners except petitioner No.2 (Sh. Gurbachan Singh) by the respondent is illegal and unjustified. If so, its effect? . . .*OPP.*
2. Whether the petition is not maintainable in the present form? . . .*OPR.*
3. Whether the petition is bad on account of delay and laches as alleged. If so, its effect? . . .*OPR.*
4. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Relief : Petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

10. At the outset, it would be pertinent to mention here that petitioner no.2 Gurbachan Singh s/o Shri Panjku Ram had withdrawn his claim petition as is evident from his statement recorded on 28.11.2013. As such, claim of all the petitioner including petitioner Raj Kumar alongwith other workmen is to be adjudicated in the light of entire evidence on record led by parties in support of their respective contention. Relationship of petitioner and other petitioners being workmen of respondent is not in dispute. It is also not in dispute that all these workmen had joined as mentioned in para no.2 of the claim petition except Ram Singh and Sarwan Kumar who had joined in the year 1999 and 1998 respectively as stated above. It also remains the case of respondent that all the workmen had continued to work with the respondent which is clear from mandays chart annexed with the reply. It is also admitted case of parties that all the workmen including petitioner were working under Assistant Engineer, Jaisinghpur and after creation of new Sub Division Balakrupi wherein petitioners were working under the respondent no.2 however all other allegations including fictional breaks or engaging junior to the petitioners has been disputed.

11. Fact of the case that the claim petition filed through its President Ravinder Kumar Dhiman for himself and on behalf of several others workmen namely Gurbachan Singh s/o Sh. Panjku Ram, Raj Kumar, s/o Sh. Dhyan Singh, Suresh Kumar s/o Sh. Hachhu Ram, Bakshi Ram s/o Sh. Joban Lal, Ram Singh s/o Sh. Relu Ram and Sarwan Kumar s/o Sh. Nathu Ram who had joined respondents in the years 1998, 2002 and 1997 respectively is not in dispute. It is the admitted case of petitioners that they had worked since 1998, 2002 and 1997 respectively but they had been deliberately given fictional breaks by respondent so that they did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioners were still working but had been working intermittently as they had abandoned the

service of their own who used to not come on their duties besides they willfully absented several times from it.

12. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that they willfully absented from their duties or had abandoned the job is devoid of merit as there is nothing in evidence to show that any letter or intimation was sent to petitioners for their unauthorized absence from their duties, rather, it is projected to be case as if petitioners came of their own and worked, left the work of their own sweet will. It is no where in evidence of respondent that if any departmental proceedings had been initiated against petitioners as absence from duty is a serious misconduct. The plea of petitioners, on the other hand remains that fictional breaks were given to them and that several persons junior to them have been regularized by respondent who were actually not given fictional breaks at any point of time. As such, respondent is stated to have worked in whimsical and arbitrary manner in giving breaks to similarly situated workmen.

13. A bare glance on mandays chart Ex. RW1/B would reveal that in the year 1998 petitioner namely Ravinder Kumar Dhiman had worked for 178 days, 106 days in the year 1999, 66 days in the year 2005, 156 days in the year 2006, 212 days in the year 2007 and thereafter he had worked for 346, 358, 358, 363, 366 and 333 from the years 2008 to 2013 respectively. The mandays chart Ex. RW1/D of co-petitioner namely Raj Kumar shows that he had worked for 205 days in 1998, 233 days in 1999, 204 days in 2000, 203 days in 2001, 170 days in 2002, 180 days in 2003, 178 days in 2004, 180 days in 2005, 180 days in 2006, 224 days in 2007 and from the years 2008 to 2013 he had worked for 363, 357, 358, 353, 354 and 313 day. Ex. RW1/E is the mandays chart of co-petitioner namely Suresh Kumar which unfolds that he had worked for 87 days in 2002, 178 days in 2003, 171 days in 2004, 168 days in 2005, 180 days in 2006, 230 days in 2007 and further he worked for 364, 365, 361.5, 362, 365 and 334 from 2008 to 2013. Ex. RW1/F is the mandays chart of co-petitioner Bakshi Ram revealed that he had worked for 208 days in 1998, 242 days in 1999, 219 days in 2000, 187 days in 2001, 173 days in 2002, 179 days in 2003, 180 days in the years 2004, 2005 & 2006 and 227 days in 2007 and thereafter he worked for 366, 365, 363, 365, 364 and 334 days from the years 2008 to 2013. Ex. RW1/G is the mandays chart of co-petitioner namely Ram Singh would reveal that he had worked for 184 days in 1999, 209 days in 2000, 194 days in 2001, 159 days in 2002, 175 days in the years 2003 & 2004, 179 days in the years 2005 & 2006, 224 days in 2007 and thereafter he had worked for 357, 358, 360, 349.05, 359 and 326 days from the years 2008 to 2013. Ex RW1/H is the mandays chart of co-petitioner namely Sarwan Kumar would reveal that he had worked for 108 days in 1998, 243 days in 1999, 206 days in 2000, 208 days in 2001, 179 days in 2002, 175 days in 2003, 173 days in 2004, 175 days in 2005, 182 days in 2006, 230 days in 2007 and thereafter he had worked for 366, 361, 361, 352.5, 361 and 330 days from the years 2008 to 2013. It can be noticed that in the several years petitioners had worked for less than 240 days, whereas after year 2007 they had worked for more than 240 days. Thus, break in service being within a period of nine years from their termination was definitely a fictional break as in remaining years they had worked for more than 240 days as stated above. Thus, the act of the respondent in giving fictional break is manifestly arbitrary without any basis. Although respondent department ipso facto does not dislodge petitioners from claiming their seniority and continuity in service from their initial engagement but fictional breaks in no manner would affect or eclipse their legitimate right of regularization in service after completion of eight years of service.

14. Stepping into the witness box as PW1, petitioner Ravinder Kumar Dhiman has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that they had been engaged and disengaged between 1998 to 2007 by giving fictional break whereas the persons junior to them have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided more

than 240 days of work after the year 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. RW1 Shri R.K. Kaushal has admitted that the details given in the Ex. RW1/B to Ex. RW1/H reveal that petitioner and other workmen to be still working with the department. He has also admitted that after the year 2007, all above named workmen had been provided whole month muster roll. He denied that the department engaged junior persons. Moreover, RW1 has admitted that as per record, no notice was given to petitioners for their absence from duty at any point of time. As such, the plea of fictional break given to the petitioners from the year 1998 to 2007 get substantiated not only from documentary evidence on record but also from testimony on oath of RW1 as well. Although, petitioners being in employment at the time of giving fictional breaks as stated above is duly established yet they cannot be deprived of their legitimate right to seek seniority as well as continuity in service from their date of joining alongwith other persons working with them. Thus, petitioners could not have been discriminated arbitrarily in the matter of giving of fictional break. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioners and giving fictional breaks in service by the respondent during 1998 to 2007 was certainly illegal and unjustified, which could be safely termed as unfair labour practice within the meaning of the Act but as the petitioners are still in employment with the respondent, they are to be given benefit of seniority and continuity in service (*except Gurbachan Singh s/o Shri Panjku Ram who had withdrawn his claim petition as is evident from his statement recorded on 28.11.2013*) however without **back wages** in the peculiar circumstances of the case. Issue in question is decided in part in favour of the petitioners and against the respondent.

ISSUE NO.2

15. On non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, ld. Dy. D.A. representing respondent department has not pressed this plea. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised. As such, issue in hand is answered in negative against the respondent and in favour of petitioners.

ISSUE NO.3

16. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has

categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. **In Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

17. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

18. As sequel to my findings on foregoing issues, it is held that the petitioners namely Ravinder Kumar, Raj, Kumar, Suresh Kumar, Bakshi Ram, Ram Singh and Sarwan Kumar were in continuous uninterrupted service with the respondents from the date of their initial engagement, the breaks given by the respondents being fictional in nature shall have no effect on the seniority and continuity of service of the petitioners and their seniority shall be reckoned from their initial date of engagement. Accordingly, claim petition is hereby allowed in part and reference is accordingly answered in their favour. The petitioners abovenamed shall thus be deemed to be in continuous service of respondents with all consequential benefits (*excluding Gurbachan Singh s/o Shri Panjku Ram) and Ranjeet Singh s/o Rikhi Ram*) **except back wages** who shall, however, be considered for regularization by respondents at the time when their juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In peculiar circumstances of case parties shall bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 273/2014

Date of Institution : 9.9.2014

Date of decision : 31.07.2015

Shri Surender Singh s/o Shri Paras Ram, r/o Village Mihara, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. *.Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. *.Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Surender Singh, S/O Shri Paras Ram, R/O Village Mihara, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 05 1999 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. May, 1999 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that respondent used to engage petitioner only for 15 to 20 days in a month instead of issuing muster roll for full month however fictional breaks for 10-15 days in each month continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent in which muster roll was issued for full month. It is alleged that the respondent had given petitioner artificial breaks from year 1999 to 30.09.2007. Not only this, the persons who were working with petitioner or joined the service after him were not given any break by the respondent arbitrarily. At the time while giving artificial/fictional breaks, the principle of ‘Last come First go’ was also not followed by the

respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State for regularization. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case. It is also contended that petitioner is still working with the respondent/department besides alleged that the act and conduct of the respondent falls within the ambit of unfair labour practice and also violated provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. The respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from May, 1998 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office is stated to have started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is alleged to be not a party to the case. It has been emphatically denied that fictional breaks had been given to the petitioner at any point of time instead the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to abandon the job invariably and report for duty intermittently per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating

the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered/proved Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar, Ex. PX copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years May, 1999 to 31st August, 2007 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? . . .*OPR*.
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . . .*OPR*.
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. May, 1999 is not in dispute. It is the admitted case of petitioner that he had worked since May, 1999 had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefit of continuous service envisaged under Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own, used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time whereas the petitioner had been given fictional breaks as has come in the evidence.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 150 days, 175 days in 2000, 167.5 days in 2001, 148 days in 2002, 166 days in 2003, 164 days in 2004, 165 days in 2005, 161 days in 2006, 217 days in 2007, 360 days in 2008, 355 days in 2009, 354 days in 2010, 361 days in 2011, 343 days in 2012, 365 days in 2013 and 206 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to have been completely ignored by respondent department as claimant petitioner was engaged in 1998 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis.

13. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in December, 1998. Since respondent had not disputed to have engaged petitioner in December, 1998, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and if there being no fictional break as stated above, petitioner ought to have been regularized as other persons who had joined along-with him and thus petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse him legitimate right of regularization in service.

14. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2000 to 2007 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 2000 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D

of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 2000 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that petitioner abandoned the job and absented from duty cannot be accepted which manifestly appear to be afterthought. It is settled law that abandonment has to be proved like any other fact. RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time or that any departmental proceedings were initiated. Thus, bald plea of respondent that petitioner had abandoned the job intermittently cannot be accepted. As such, the plea of fictional break given to the petitioner from the year 2000 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

15. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Himal Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In so far as remaining 'gainfully employed' during fictional break period of petitioner is concerned, suffice would be to state here that petitioner himself admitted on oath to have remained engaged in agricultural work during break period and thus he would not be entitled for back wages for this period. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2000 to 2007 was certainly illegal and unjustified and in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages**. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

16. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

17. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. As per claim petition, as petitioner was initially appointed with respondent PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of

separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case as seniority list qua workmen under the division remains the same. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

18. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

19. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is answered in negative in favour of petitioner against the respondent.

RELIEF

20. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall,

however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 391/2014

Date of Institution : 16.12.2014

Date of decision : 31.07.2015

Shri Kaul Singh s/o Shri Khula Ram, r/o Village and P.O. Khadihar, Tehsil Joginder Nagar,
District Mandi, H.P. *. Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
. Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
 : Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of services of Shri Kaul Singh S/O Shri Khula Ram, R/O Village and P.O. Khadihar, Tehsil Joginder Nagar, District Mandi, H.P. from April, 1999 to 31.08.2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the

Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. April, 1999 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that respondent used to engage petitioner only for 15 to 20 days in a month instead of issuing muster roll for full month however fictional breaks for 10-15 days in each month continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent in which muster roll was issued for full month. It is alleged that the respondent had given petitioner artificial breaks from year 1999 to 31.08.2007. Not only this, the persons who were working with petitioner or joined the service after him were not given any break by the respondent arbitrarily. At the time of giving artificial/fictional breaks, the principle of 'Last come First go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others who worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State for regularization. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided infavour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case. It is alleged that the act and conduct of the respondent giving fictional breaks falls within the ambit of unfair labour practice and also violative of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. The respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from October, 1999 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office is stated to have started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is alleged to be not a party to the case. It has been emphatically denied that fictional breaks had been given to the petitioner at any point of time instead the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to abandon the job invariably and report

for duty intermittently per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered/proved Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years April, 2000 to 31st August, 2007 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? . . .*OPR.*
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . . .*OPR.*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Yes

Issue No. 2 : Discussed

Issue No. 3 : No

Issue No. 4 : No

Issue No. 5 : No

Relief: Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be pertinent to mention here that claimant/petitioner Kaul Singh had retired on 31.3.2013 as per monthwise seniority list Ex. RW1/C on record. As such, it may not be erroneous observe here that the claimant/petitioner was already retired from service when reference from appropriate government was received by this court for adjudication. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. October, 1999 is not in dispute. It is the admitted case of petitioner that he had worked in the respondent/department since October, 1999 had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefit of continuous service envisaged under Section 25-B of the Act. The plea of respondent, on the other hand, remains that petitioner had been working intermittently as he of his own, used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time whereas the petitioner had been given fictional breaks.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 92 days, 1999 days in 2000, 188 days in 2001, 236 days in 2002, 192 days in 2003, 169 days in 2004, 146 days in 2005, 145 days in 2006, 225 days in 2007, 346 days in 2008, 353 days in 2009, 355 days in 2010, 361 days in 2011, 353 days in 2012 and 87 days in 2013. It can be noticed that till 2007, petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days in each subsequent calendar year. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to have been completely ignored by respondent department as claimant petitioner was engaged in 1999 much prior to year 2007 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine

years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis falling within the ambit of 'unfair labour practice' as per provisions of Industrial Disputes Act.

13. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in October, 1999. Since respondent had not disputed to have engaged petitioner in October, 1999, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and if there being no fictional break as stated above, petitioner ought to have been regularized as other persons who had joined along-with him and thus petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse him legitimate right of regularization in service.

14. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1999 to 2007 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that petitioner abandoned the job and absented from duty cannot be accepted which manifestly appear to be afterthought.

15. It is settled law that abandonment has to be proved like any other fact. RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time or that any departmental proceedings were initiated. Thus, bald plea of respondent that petitioner had abandoned the job intermittently cannot be accepted. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

16. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Himat Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of

petitioner. In so far as remaining 'gainfully employed' during fictional break period of petitioner is concerned, suffice would be to state here that petitioner himself admitted on oath to have remained engaged in agricultural work during break period and thus he would not be entitled for back wages for this period. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2000 to 2007 was certainly illegal and unjustified and in contravention of provisions of Section 25-F, 25-G & 25 H of the Act since the petitioner had retired from service on 31.3.2013 as has been come in evidence, he is to be given benefit of seniority and continuity in service **except back wages**. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

17. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

18. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. As per claim petition, as petitioner was initially appointed with respondent PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case as seniority list qua workmen under the division remains the same. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

19. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section

33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another**, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

20. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is answered in negative in favour of petitioner against the respondent.

RELIEF

21. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. It is further ordered that regularization of petitioner by respondent shall be done keeping in view his retirement prior to the date of reference and also considering when juniors of petitioner have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. In peculiar circumstances of case, there are no orders as to costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 301/2014

Date of Institution : 18.9.2014

Date of decision : 31.07.2015

Shri Surender Kumar s/o Shri Bidhi Singh, r/o Village Banar, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. . *Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Surender Kumar, S/O Shri Bidhi Singh, R/O Village Banar, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 12 1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. December, 1998 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that respondent used to engage petitioner only for 15 to 20 days in a month instead of issuing muster roll for full month however fictional breaks for 10-15 days in each month continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent in which muster roll was issued for full month. It is alleged that the respondent had given petitioner artificial breaks from year 1998 to 30.09.2007. Not only this, the persons who were working with petitioner or joined the service after him were not given any break by the respondent arbitrarily. At the time while giving artificial/fictional breaks, the principle of ‘Last come First go’ was also not followed by the

respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State for regularization. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case. It is also contended that petitioner is still working with the respondent/department besides alleged that the act and conduct of the respondent falls within the ambit of unfair labour practice and also violated provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. The respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from May, 1998 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office is stated to have started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is alleged to be not a party to the case. It has been emphatically denied that fictional breaks had been given to the petitioner at any point of time instead the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to abandon the job invariably and report for duty intermittently per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating

the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered/proved Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar, Ex. PX copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years May, 1999 to 31st August, 2007 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? . . .*OPR*.
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . . .*OPR*.
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. May, 1999 is not in dispute. It is the admitted case of petitioner that he had worked since May, 1999 had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefit of continuous service envisaged under Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own, used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time whereas the petitioner had been given fictional breaks as has come in the evidence.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 8 days, 155.5 days in 1999, 176 days in 2000, 178 days in 2001, 162 days in 2002, 175 days in 2003, 166 days in 2004, 145 days, 150 days in 2006, 215 days in 2007, 364 days in 2008, 363 days in 2009, 335 days in 2010, 363 days in 2011, 354 days in 2012, 363 days in 2013 and 210 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to have been completely ignored by respondent department as claimant petitioner was engaged in 1998 much prior to year 2007 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis.

13. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in April, 1998. Since respondent had not disputed to have engaged petitioner in April, 1998, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and if there being no fictional break as stated above, petitioner ought to have been regularized as other persons who had joined along-with him and thus petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse him legitimate right of regularization in service.

14. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1998 to 2007 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1998 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D

of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1998 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1998 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that petitioner abandoned the job and absented from duty cannot be accepted which manifestly appear to be afterthought. It is settled law that abandonment has to be proved like any other fact. RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time or that any departmental proceedings were initiated. Thus, bald plea of respondent that petitioner had abandoned the job intermittently cannot be accepted. As such, the plea of fictional break given to the petitioner from the year 1998 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

15. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Himal Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In so far as remaining 'gainfully employed' during fictional break period of petitioner is concerned, suffice would be to state here that petitioner himself admitted on oath to have remained engaged in agricultural work during break period and thus he would not be entitled for back wages for this period. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 1998 to 2007 was certainly illegal and unjustified and in contravention of provisions of Section 25-F, 25-G & 25 H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages**. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

16. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

17. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. As per claim petition, as petitioner was initially appointed with respondent PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of

separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case as seniority list qua workmen under the division remains the same. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

18. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

19. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is answered in negative in favour of petitioner against the respondent.

RELIEF

20. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in

continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 284/2014

Date of Institution : 18.9.2014

Date of decision : 31.07.2015

Shri Bhag Mal s/o Shri Nathu Ram, r/o Village Fegru, P.O. Dul, Tehsil Joginder Nagar,
District Mandi, H.P. *. Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
. Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Bhag Mal, S/O Shri Nathu Ram, R/O Village Fegru, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during 04-2000 to 31-08- 2007 by the Executive Engineer, B&R Division H.P.P.W.D.,

Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis in the year 2000 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that respondent used to engage petitioner only for 15 to 20 days in a month instead of issuing muster roll for full month however fictional breaks for 10-15 days in each month continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent in which muster roll was issued for full month. It is alleged that the respondent had given petitioner artificial breaks from year 2000 to 30.09.2007. Not only this, the persons who were working with petitioner or joined the service after him were not given any break by the respondent arbitrarily. At the time while giving artificial/fictional breaks, the principle of 'Last come First go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State for regularization. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2007 and 10 years of continuous service on 31.12.2009 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case. It is also contended that petitioner is still working with the respondent/department besides alleged that the act and conduct of the respondent falls within the ambit of unfair labour practice and also violated provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. The respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from May, 2000 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office is stated to have started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is alleged to be not a party to the case. It has been emphatically denied that fictional breaks had been given to the petitioner at any point of time instead the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for

the entire month was provided to the petitioner who used to abandon the job invariably and report for duty intermittently per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered/proved Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully. 8. From the contentions raised, following issues were framed on 02.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years April, 2000 to 31st August, 2007 is/was improper and unjustified as alleged?
..OPP.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to?
..OPP.
3. Whether the claim petition is not maintainable in the present form as alleged? OPR
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged?
..OPR.
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect?
..OPR.
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

<i>Issue No.1 :</i>	Yes
<i>Issue No.2 :</i>	Discussed
<i>Issue No.3 :</i>	No
<i>Issue No.4 :</i>	No
<i>Issue No.5 :</i>	No
<i>Relief :</i>	Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. May, 2000 is not in dispute. It is the admitted case of petitioner that he had worked since May, 2000 had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefit of continuous service envisaged under Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own, used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time whereas the petitioner had been given fictional breaks as has come in the evidence.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 2000 petitioner had worked for 109 days, 168 days in 2001, 162 days in 2002, 178 days in 2003, 167 days in 2004, 168 days in 2005, 161 days in 2006, 220 days in 2007, 364 days in 2008, 363 days in 2009, 365 days in 2010, 365 days in 2011, 349 days in 2012, 365 days in 2013 and 210 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to have been completely ignored by respondent department as claimant petitioner was engaged in 2000 much prior to year 2007 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis.

13. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in January, 2000. Since respondent had not disputed to have engaged petitioner in January, 2000, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and if there being no fictional break as stated above, petitioner ought to have been regularized as other persons who had joined along-with him and thus petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse him legitimate right of regularization in service.

14. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 2000 to 2007 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 2000 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 2000 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 2000 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that petitioner abandoned the job and absented from duty cannot be accepted which manifestly appear to be afterthought. It is settled law that abandonment has to be proved like any other fact. RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time or that any departmental proceedings were initiated. Thus, bald plea of respondent that petitioner had abandoned the job intermittently cannot be accepted. As such, the plea of fictional break given to the petitioner from the year 2000 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

15. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Himel Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In so far as remaining 'gainfully employed' during fictional break period of petitioner is concerned, suffice would be to state here that petitioner himself admitted on oath to have remained engaged in agricultural work during break period and thus he would not be entitled for back wages for this period. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 2000 to 2007 was certainly illegal and unjustified and in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given

benefit of seniority and continuity in service **except back wages**. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

16. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

17. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. As per claim petition, as petitioner was initially appointed with respondent PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case as seniority list qua workmen under the division remains the same. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

18. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

19. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is answered in negative in favour of petitioner against the respondent.

RELIEF

20. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 290/2014

Date of Institution : 18.9.2014

Date of decision : 31.07.2015

Shri Bhag Mal s/o Shri Ram Singh, r/o Village Mihara, P.O. Dul, Tehsil Joginder Nagar,
District Mandi, H.P. . .Petitioner.

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P.
. Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.
For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Bhag Mal, S/O Shri Ram Singh, R/O Village Mihara, P.O. Dul, Tehsil Joginder Nagar, District Mandi, H.P. during January 1999 to 31-8- 2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. January, 1999 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that respondent used to engage petitioner only for 15 to 20 days in a month instead of issuing muster roll for full month however fictional breaks for 10-15 days in each month continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent in which muster roll was issued for full month. It is alleged that the respondent had given petitioner artificial breaks from year 1999 to 30.09.2007. Not only this, the persons who were working with petitioner or joined the service after him were not given any break by the respondent arbitrarily. At the time while giving artificial/fictional breaks, the principle of ‘Last come First go’ was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner’s services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State for regularization. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya’s case. It is also contended that petitioner is still working with the respondent/department besides alleged that the act and conduct

of the respondent falls within the ambit of unfair labour practice and also violated provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. The respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from January, 1999 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office is stated to have started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is alleged to be not a party to the case. It has been emphatically denied that fictional breaks had been given to the petitioner at any point of time instead the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to abandon the job invariably and report for duty intermittently per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered/proved Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years January, 1999 to 31st August, 2007 is/was improper and unjustified as alleged? . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . .*OPR.*
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? . .*OPR.*
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . .*OPR.*
6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. January, 1999 is not in dispute. It is the admitted case of petitioner that he had worked since May, 1999 had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefit of continuous service envisaged under Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own, used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his

duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time whereas the petitioner had been given fictional breaks as has come in the evidence.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1999 petitioner had worked for 189 days, 171 days in 2000, 168 days in 2001, 151 days in 2002, 174 days in 2003, 158.5 days in 2004, 168 days in 2005, 14 days in 2006, 362 days in 2008, 363 days in 2009, 365 days in 2010, 362 days in 2011, 350 days in 2012, 365 days in 2013 and 210 days in 2014. It can be noticed that till 2006 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to have been completely ignored by respondent department as claimant petitioner was engaged in 1999 much prior to year 2006 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis.

13. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in January, 1999. Since respondent had not disputed to have engaged petitioner in January, 1999, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and if there being no fictional break as stated above, petitioner ought to have been regularized as other persons who had joined along-with him and thus petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse him legitimate right of regularization in service.

14. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1999 to 2006 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1999 to 2006 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1999 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1999 to 2006 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that petitioner abandoned the job and absented from duty cannot be accepted which manifestly appear to be afterthought. It is settled law that abandonment has to be proved like any other fact. RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at

any point of time or that any departmental proceedings were initiated. Thus, bald plea of respondent that petitioner had abandoned the job intermittently cannot be accepted. As such, the plea of fictional break given to the petitioner from the year 1999 to 2006 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

15. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Himel Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In so far as remaining 'gainfully employed' during fictional break period of petitioner is concerned, suffice would be to state here that petitioner himself admitted on oath to have remained engaged in agricultural work during break period and thus he would not be entitled for back wages for this period. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 1999 to 2006 was certainly illegal and unjustified and in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages**. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

16. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

17. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. As per claim petition, as petitioner was initially appointed with respondent PW1 has admitted in cross-examination that petitioner was working with respondent although he earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case as seniority list qua workmen under the division remains the same. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

18. It is settled proposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs.**

Garibu Ram, Latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

19. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is answered in negative in favour of petitioner against the respondent.

RELIEF

20. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wagers as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

21. The reference is answered in the aforesaid terms.

22. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

23. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref No. : 297/2014
Date of Institution : 18.9.2014
Date of decision : 31.07.2015

Shri Kishori Lal s/o Shri Kashmir Singh, r/o Village Gaduhi, P.O. Bhararu, Tehsil Joginder Nagar, District Mandi, H.P. *. Petitioner.*

Versus

The Executive Engineer, B&R Division, H.P.P.W.D. Joginder Nagar, Distt. Mandi, H.P. *. Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Kishori Lal, S/O Shri Kashmir Singh, R/O Village Gaduhi, P.O. Bhararu, Tehsil Joginder Nagar, District Mandi, H.P. during 11- 1998 to 31-08-2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition reveal that the services of petitioner were engaged by the B&R Department as a daily wager on muster roll basis w.e.f. November, 1998 who worked under the Assistant Engineer, HPPWD Sub Division, Joginder Nagar but no appointment

order/letter was issued in his name by the respondent. Averments made in claim petition further stipulates that the latter used to engage petitioner's for 15 to 20 days every month instead of the full month and that fictional breaks for 10-15 days in each month were continued to be given by the respondent till 30.09.2007. Thereafter, as per the instructions issued by the Principal Secretary (PW) to the Government of Himachal Pradesh per letter dated 14.9.2007, his services were continuously engaged by the respondent. It is alleged that the respondent had given petitioner artificial breaks from the year 1998 to 30.09.2007. Not only this, the persons who were working with him (petitioner) or joined the service after him were not given any break by the respondent deliberately. At the time while giving artificial/fictional breaks, the principle of 'last come first go' was also not followed by the respondent and the persons junior to petitioner namely Shri Rajinder Singh and Sh. Sumer Singh and others worked with the respondent/department without any break and that the period of artificial breaks is required to be counted as continuous service for the purpose of the regularization of petitioner's services. It is alleged that the persons junior to petitioner have been regularized by the respondent earlier to him contrary to the policy of the State. A similar case titled as Suresh Kumar vs. The Executive Engineer, HPPWD, Division Baijnath bearing reference No.23/2010 has already been decided in favour of the workman by this Court per Award dated 28.11.2011 and thus petitioner having completed eight years of continuous service on 31.12.2006 and 10 years of continuous service on 31.12.2008 was liable to be regularized as work charged beldar as per the policy framed/approved in Mool Raj Upadhaya's case i.e. w.e.f. 1st January, 2009 in the pay scale of Rs.4910-10680/- with all other perks and allowances. It is also contended that petitioner is still working with the respondent/department. The act and conduct of the respondent is also alleged to be unfair labour practice which also violates Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

4. Respondent contested petition, filed separate reply inter-alia taken preliminary objections qua non-maintainability as no legal or fundamental right of the petitioner has been infringed, the petition being hit by the vice of delay and laches and bad for not impleading the State of Himachal Pradesh and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar as parties to the petition. On merits, engagement of the services of the petitioner from September, 1998 is admitted. However, it has been pleaded that the petitioner was employed by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar and that respondent's office was created in the month of January, 2004 vide notification dated 9th December, 2003. The office started functioning w.e.f. 2nd January, 2004 and after the creation of his (respondent's) office, the petitioner and some other workmen were transferred to the newly created Division from the National Highway Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 pertains to the office of the Executive Engineer, National Highway Division, Joginder Nagar, who is not a party to the case. It has been emphatically denied that if fictional breaks were given to the petitioner at any point of time rather the services of the petitioner were engaged as per the availability of the work and funds. As and when the services of the petitioner were engaged in accordance with his verbal requests from time to time, he was duly made aware regarding the availability of the work besides maintained that no continuous work for the entire month was provided to the petitioner who used to report for duty intermittently as per his convenience. The workmen whose names have been disclosed by the petitioner, worked in continuity and that their services have been regularized as per the seniority and policy of the State. The policy framed in Mool Raj Upadhaya's case is stated to be not applicable to the present case as in that case, one time benefit was given to the employees who had either completed 10 years of continuous service with 240 days in each calendar year as on 31.12.1993 or the employees who had rendered one or more year of service but had not completed 10 years of service up-to 31.12.1993. It is further asserted that the services of the petitioner would be regularized as per the policy of the State besides denied to have indulged in any unfair labour practice and maintained that no provision of the Act has been violated. Accordingly, cause of action as pleaded in the claim petition filed by petitioner is denied and the petition is sought to be dismissed.

5. No rejoinder has been filed by petitioner.

6. To prove his case, petitioner had examined herself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks, Ex. PW1/C copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Anil Sangrai the then Executive Engineer, HPPWD (NH) Division Joginder Nagar and additional charge of B&R Division as RW1 tendered Ex. RW1/A notification dated 9th December, 2003, Ex. RW1/A copy of notification dated 9.12.2003, Ex. RW1/B copy of letter dated 2.1.2004 regarding creation of PWD Division (B&R) Joginder Nagar in the year 2004, Ex. RW1/C mandays chart of petitioner, Ex. RW1/D year-wise working days of daily wage Beldar, Ex. PX copy of letter dated 14th September, 2007 of Pr. Secretary (PW) to The Engineer-in-Chief and others regarding providing of muster roll for complete month to the workers in PWD without break instead of 15/18/20 or 30 days with intermittent breaks and closed the evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 02.4.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years November, 1998 to 31st August, 2007 is/was improper and unjustified as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR.*
4. Whether the claim petition is bad for non-joinder of the necessary parties as alleged? . . .*OPR.*
5. Whether the claim petition is bad on account of delay and laches on part of the petitioner as alleged. If so, its effect? . . .*OPR.*

6. Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Relief : Petition is allowed per operative part of the Award.

REASONS FOR FINDINGS**ISSUES NO. 1 AND 2**

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Factum of petitioner having been appointed as daily waged beldar on muster roll by the respondent w.e.f. November, 1998 is not in dispute. It is the admitted case of petitioner that petitioner had worked since November, 1998 but he had been deliberately given fictional breaks by respondent so that petitioner did not complete 240 days to get benefits of Section 25-B of the Act. The plea of respondent, on the other hand remains that petitioner was still working but had been working intermittently as he of his own, used to not come on his duty besides he willfully absented several times from his duty. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent that petitioner willfully absented from his duties is devoid of merit as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties. Rather, it is projected to be case as if petitioner came of his own for work and left the work of his own sweet will. The plea of petitioner, on the other hand remains that fictional breaks were given to him and that several persons junior to him namely Smt. Guddi Devi, Sh. Prithi Chand, Sh. Ravinder Kumar, Sh. Dalip Singh, Sh. Gautam Ram, Sh. Bhawani Singh and Sh. Ram Dhan have been regularized by respondent and these persons were actually not given fictional breaks at any point of time.

12. A bare glance on mandays chart Ex. RW1/C would reveal that in the year 1998 petitioner had worked for 25 days, 188 days in 1999, 194 days in 2000, 187 days in 2001, 171 days in 2002, 182 days in 2003, 170 days in 2004, 169 days in 2005, 162 days in 2006, 230 days in 2007, 355 days in 2008, 363 days in 2009, 365 days in 2010, 365 days in 2011, 366 days in 2012, 365 days in 2013 and 212 days in 2014. It can be noticed that till 2007 petitioner has worked for less than 240 days whereas for other remaining years he had worked for more than 240 days. It may be pertinent to state here that vide letter dated 14.9.2007 Ex. PW1/B direction has been given by government to provide muster roll to all labourers who have been engaged for 15/20 days or 30 days be provided muster roll for full month in certain situation but this instruction appears to be have been completely ignored by respondent department as claimant petitioner was engaged in 1999 much prior to year 2007 and had not completed 10 years who was to be issued muster roll for full month in relaxation of policy as special case. Thus, break in service being within a period of nine years from his termination was definitely a fictional break as in remaining years he had worked for more than 240 days. The act of the respondent in giving fictional break is manifestly arbitrary without any basis. Seniority list of regular labourers HPPWD (B&R) Division has also been relied upon by respondent which is Ex. RW1/D on record in which all the persons named above are shown to have joined in the years 2000, 2002 and 2003 except at serial nos. 1 to 3 who had joined earlier to petitioner as workman at serial no.4 joined in the year 1999 whereas petitioner had joined in December, 1997. Since respondent had not disputed to have engaged petitioner in December, 1997, he ought to have been regularized having continuously worked for about 9 years with requisite number of days required for regularization and there being no fictional break as stated above, which would show that other persons who had joined along-with him have been regularized but the petitioner has been deprived of his legitimate right for regularization till now. Although respondent department ipso facto does not dislodge petitioner from claiming his seniority and continuity in service from his initial engagement and thus fictional breaks in no manner would affect or eclipse him legitimate right of regularization in service.

13. Stepping into the witness box as PW1, petitioner has sworn detailed affidavit under Order 18 Rule 4 CPC stipulating therein that he had been engaged and disengaged between 1999 to

2007 by giving fictional break whereas the persons junior to him have been continuously engaged by department for the whole year who had completed more than 240 days in a calendar year. In cross-examination, he has admitted that he has been provided work more than 240 days of work after September, 2007 which means the dispute is only for the years 1999 to 2007 as stated in the affidavit. RW1 Shri Anil Sangrai has admitted in cross-examination that seniority list Ex. RW1/D of all the labourers shown in the said seniority list were employed after the engagement of the petitioner. He has admitted that working of 240 days is to be established by petitioner to claim benefit of deemed service under Section 25-B of the Act. He has admitted that petitioner has been engaged in the year 1997 who had not been issued any appointment letter. He has denied that petitioner had been deliberately given breaks in the years from 1999 to 2007 but he could not prove as no corresponding record has been produced by the respondent to establish that on absence of petitioner from his duty any notice was issued for unauthorized absence and the version of RW1 that he came and go of his own from duty cannot be accepted which manifestly appear to be afterthought. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. As such, the plea of fictional break given to the petitioner from the year 1999 to 2007 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well.

14. Although petitioner being in employment at the time of giving fictional breaks as stated above is duly established yet he cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him besides petitioner could not have been discriminated arbitrarily between similarly situated workmen. It would be pertinent to mention here that Guddi Devi w/o Himal Chand who joined in July, 2000 as per Ex. RW1/D has been regularized but she was not given any fictional break in 2000 to 2003 which further establishes arbitrary manner of working of respondent in the matter of giving fictional break. No reason whatsoever has been assigned by respondent for not giving any fictional breaks to others which further shows that plea of non availability of work or the funds as the case may be was not correct stand of respondent made with the object to defeat the claim of petitioner. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent from 1999 to 2007 was certainly illegal and unjustified in contravention of provisions of Section 25-F, 25-G & 25-H of the Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** particularly when he has admitted to have remained gainfully employed while working as an agriculturist. Issue in question is thus as stated above decided in part in favour of the petitioner and against the respondent.

ISSUE NO.3

15. On the plea non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Id. Dy. D.A. representing respondent department has contended that present claim petition is not maintainable as the petitioner had abandoned the job of his own and did not join his duty despite issuance of muster roll for the relevant period. From the pleadings of the parties and evidence on record as discussed in foregoing paras, no inference of claim petition being not maintainable could be raised instead the same is held to be maintainable. As such, the issue in hand is decided in favour of the petitioner and against the respondent.

ISSUE NO.4

16. In the light of my findings on the issues no.1 and 2 in foregoing para, it is held that the Executive Engineer, HPPWD, National Highway Division, Joginder Nagar is not a necessary party to be impleaded in this case. Claim petition as petitioner was initially appointed with respondent only PW1 has admitted in cross-examination that he was working with respondent although he

earlier worked with Executive Engineer HPPWD National Highways. Thus, creation of separate HPWPD division vide office order Ex. RW1/D shall have no serious consequence on merits of case. Issue in hand is answered in negative in favour of petitioner and against respondent.

ISSUE NO.5

17. It is settled preposition of law that in case a dispute is referred to for determination, the Court will have to return a finding on merits and the delay in raising the dispute may be considered by the Court at the time of granting the final relief, as has been held by our own Hon'ble High Court in Bhatag Ram's case (2007 LHLJ 903). In **Divisional Manager, HPFC & another vs. Garibu Ram, Latest HLJ 2007 (HP) 1160**, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated by holding that the provisions of Limitation Act is not applicable to industrial dispute but however, depending upon the facts and circumstances of each case, the principle of delay and laches have to be seen and applied. In **Deepa Ram vs. State of H.P. and Ors., 2005 (1) Himachal Law Journal 248**, there was a delay of 12 years. In **Ramesh Chand vs. Union of India, CWP No. 812 of 2000**, there was a delay of 9 years. In CWP No. 95 of 2000 titled as **Divisional Manager vs. Mohinder Kumar**, there was a delay of 14 years. In **Naginder Kumar vs. HPSEB and anr. 2008 (1) SLJ (H.P.) 425**, it has been held by the Hon'ble High Court of H.P. that the Labour Court cannot dismiss the claim on the ground of delay and laches once the same has been referred by the State Government and the Labour Court is bound to decide the reference which was made by the State Government and same is required to be adjudicated upon the merits without touching the aspect of delay and laches. The Hon'ble Apex Court in the **Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors, AIR 1964 SC 752**, has categorically held that as such of all those employees, who are entitled to take the benefit of Section 33-C (2) may not always be conscious of their rights and it may not be right to put the restriction of limitation in respect of claim which they may have to make under the provision and in absence of any provision for limitation, it may not be open to the Court to introduce the limitation on the ground of fairness and justice. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

18. No material has been placed on record by the respondents to establish that there was inordinate delay on the part of the petitioner in raising the dispute in the instant case or that any prejudice had been caused to respondent. Accordingly, the petition as filed by the petitioner cannot be held to be hit by the vice of delays and laches as alleged by the respondent. Hence, this issue is decided against the respondent and is answered accordingly.

RELIEF

19. As sequel to my findings on foregoing issues, it is held that the petitioner was in continuous uninterrupted service with the respondent from the date of his initial engagement and that the breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from his initial date of engagement. Accordingly, claim of petitioner is hereby allowed in part and reference is accordingly answered in favour of petitioner. The petitioner shall thus be deemed to be in

continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of July, 2015.

(K.K. Sharma)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Dharamshala, H.P.

**In the Court of Shri Hemis Negi, H.A.S., Sub-Divisional Magistrate, Shimla (Urban),
District Shimla, Himachal Pradesh**

Smt. Kamal Kumari w/o Shri Ashok Kumar, r/o Slaughter House Krishna Nagar, Shimla,
Tehsil and District Shimla, H. P. . . *Applicant.*

Versus

General Public . . *Respondent.*

Application under Section 13(3) of Birth and Death Registration Act, 1969.

Whereas Smt. Kamal Kumari w/o Shri Ashok Kumar, r/o Slaughter House Krishna Nagar, Shimla, Tehsil and District Shimla, H. P. has applied for registration the name and date of birth of her son namely Lalit Kumar (DOB 16-4-1999) in the record of Municipal Corporation, Shimla, District Shimla, H. P.

Therefore, this proclamation, the General Public is hereby informed that any person having any objection for entry as to date of Birth mentioned above, may submit his objection in writing in this court on or before 24-10-2015 failing which no objection will be entertained after expiry of date and will be decided accordingly.

Given under my hand and seal of the Court on this 24th day of September, 2015.

Seal.

HEMIS NEGI,
Sub-Divisional Magistrate,
Shimla (Urban), District Shimla.

ब अदालत श्री वाई0 पी0 एस0 वर्मा, उप-मण्डल दण्डाधिकारी रोहडू, जिला शिमला, हिमाचल प्रदेश

ब मुकद्दमा :

1. चरण सिंह पुत्र श्री रघुबीर सिंह, निवासी ग्राम शेखल, पोस्ट ढाडी-घुन्सा, तहसील रोहडू, जिला शिमला, हि0 प्र0।
2. ज्योति पुत्री श्री विशम्बर दास, निवासी ग्राम व पोस्ट समोली, तहसील रोहडू, जिला शिमला, हि0 प्र0 वादीगण

बनाम

आम जनता

प्रार्थना पत्र जेर धारा 15, स्पेशल मैरिज ऐक्ट, 1954.

उपरोक्त मुकद्दमा में श्री चरण सिंह व ज्योति ने जेर धारा 15, स्पेशल मैरिज ऐक्ट, 1954 के अन्तर्गत प्रार्थना पत्र बाबत विवाह इस न्यायालय में दिनांक 09-09-2015 को पेश किया है कि वे दोनों उक्त ऐक्ट के तहत विवाह करना चाहते हैं।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि किसी व्यक्ति को उपरोक्त फरीकैन के आपसी विवाह करने बारे कोई एतराज व उजर हो तो वह दिनांक 26-10-2015 को प्रातः 11.00 बजे असालतन या वकालतन हाजर आकर अपना एतराज लिखित रूप में पेश कर सकता है अन्यथा वादीगण का विवाह पंजीकृत कर दिया जाएगा।

आज दिनांक 10 अगस्त, 2015 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर।

वाई0 पी0 एस0 वर्मा,
उप-मण्डल दण्डाधिकारी,
रोहडू, जिला शिमला (हि0 प्र0)।

ब अदालत श्री राजीव संख्यान, सहायक समाहर्ता प्रथम श्रेणी, कोटखाई, जिला शिमला, हि0 प्र0

मुकद्दमा नं0

तारीख मरजुआ : 3-9-2015

तारीख पेशी : 20-10-2015

1. मोहेन्दर सिंह पुत्र स्व0 जैसी राम, ग्राम पुडग, तहसील कोटखाई
2. जोगिन्दर सिंह पुत्र स्व0 जैसी राम, ग्राम पुडग, तहसील कोटखाई प्रार्थीगण।

बनाम

1. हमेन्दर सिंह पुत्र स्व नरेन्दर सिंह, 2. श्रीमती अंजना पुत्री स्व नरेन्दर सिंह, 3. भावना पुत्री स्व0 नरेन्दर सिंह, 4. शालिनी पुत्री स्व0 नरेन्दर सिंह, 5. रुपमति विधवा नरेन्दर सिंह, 6. श्री भोपाल सिंह पुत्र रघुनाथ, 7. श्री अर्जुन प्रताप सिंह पुत्र गोवर्धन सिंह, 8. श्री अभिषेक सिंह पुत्र गोवर्धन सिंह, 9. श्रीमती तारा देवी विधवा गोवर्धन सिंह, 10. श्री दिगविजय सिंह पुत्र रघुनाथ, 11. श्रीमती विनदरा देवी पुत्री रघुनाथ, 12. श्रीमती त्रिपुरा देवी पुत्री रघुनाथ, 13. श्रीमती वसन्तीका विधवा रघुनाथ सभी निवासी ग्राम नेवट, तहसील कोटखाई प्रत्यार्थीगण।

Appplication u/s 104 Sub-Section (37 read with Rule 27 & 28 of the H. P. Tenancy & Land Reforms Act for conferment of proprietary rights on the applicants and also recording nessary entries based on attestation of mutation in favour of applicants.

उपरोक्त विषय बारा प्रार्थीगणों ने अधोहस्ताक्षरी की अदालत में प्रार्थना पत्र गुजार रखा है। जिसमें प्रत्यार्थीगणों की तामील हेतु इस अदालत द्वारा समन जारी किए गए थे जो कि अधूरा पता होने के कारण अदम तामील वापिस आए हैं। प्रार्थीगणों ने प्रत्यार्थीगणों का सही पता मालूम न होने के कारण असमर्थता जाहिर की है जिससे यह प्रतीत होता है कि प्रत्यार्थी नं० 1 ता 13 की तामील साधारण तरीके से होनी मुश्किल है। अतः इस इशतहार द्वारा सूचित किया जाता है कि उपरोक्त ईन्द्राज बारे यदि किसी को कोई उजर/एतराज हो तो दिनांक 20-10-2015 को 10.00 बजे असालतन या वकालतन हाजिर होकर अपना एतराज पेश करें। उजर या एतराज दर्ज न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 16-9-2015 को मेरे हस्ताक्षर व मोहर सहित अदालत से जारी हुआ।

मोहर।

राजीव संख्यान,
सहायक समाहर्ता प्रथम श्रेणी,
कोटखाई, जिला शिमला, हि० प्र०।